183

SUPREME COURT OF THE UNITED STATES.

No. ~~240.~~ 125.

HARRIET T. LEE, LEWIS H. LEE, AND GEORGE S. LEE, APPELLANTS,

vs.

WILLIAM E. DODGE, DANIEL JAMES, JAMES STOKES, D. WILLIS JAMES, AND WILLIAM E. DODGE, JR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GOVERNMENT PRINTING OFFICE.

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No. 246.

HARRIET T. LEE, LEWIS H. LEE, AND GEORGE S. LEE, APPELLANTS,

vs.

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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, before the Hon. Thomas Drummond, judge of the district court of said district on the chancery side of said court, and on Wednesday, the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and sixty-two, and of our independence the eighty-seventh year.

WM. H. BRADLEY, *Clerk.*

WILLIAM E. DODGE, DANIEL JAMES, JAMES STOKES, D. WILLIS, JAMES and WILLIAM E. DODGE, junior, *v.* LEWIS H. LEE, HARRIET T. LEE, GEORGE S. LEE, LAURA S. LEE, JOHN G. THURSTON, JOHN F. FARNSWORTH, JOHN L. BEVERIDGE, and JULIUS G. LUMBARD.	Chancery.

2 Be it remembered that on the twenty-second day of July, in the year of our Lord one thousand eight hundred and fifty-nine, said plaintiffs, by Scammon, McCagg & Fuller, their solicitors, came into the clerk's office of the circuit court of the United States for the northern district of Illinois, and file their bond for costs and also their bill of complaint in the words and figures following, to wit:

Bond for costs.

Circuit court, July term, A. D. 1859.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

WILLIAM E. DODGE, DANIEL JAMES, JAMES STOKES, D. WILLIS, JAMES and WILLIAM E. DODGE, junior, *v.* LEWIS H. LEE, HARRIET T. LEE, GEORGE S. LEE, LAURA S. LEE, JOHN G. THURSTON, JOHN F. FARNSWORTH, JOHN L. BEVERIDGE, and JULIUS G. LUMBARD.	In chancery.

3 We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plaintiffs of any costs ordered or adjudged to be paid by them, hereby agree and stipulate that execution may issue against our property for any costs taxed against them.

SCAMMON, McCAGG & FULLER.

Dated this eighteenth day of July, A. D. 1859.

Endorsed: Filed July 22d, A. D. 1859.

WM. H. BRADLEY, *Clk.*

Complainants' bill of complaint.

4 United States circuit court, northern district of Illinois, July term, A. D. 1859.

To the judges of the circuit court of the United States for the northern district of Illinois:

Your orators, William E. Dodge, Daniel James, James Stokes, D. Willis, James and William E. Dodge, junior, who are citizens of the State of New York, humbly complaining, show unto your honors that, on the 27th day of August, A. D. 1841, the State of Illinois, by patent of that date, granted and conveyed to one George W. Lee that parcel of land described as lot four (4) in block fifty-three (53) in the original town of Chicago, Cook county, Illinois, for the sum of three thousand three hundred and sixty dollars ($3,360 00,) which patent was recorded April 23rd, A. D. 1842, in book 7, page 206, of the records of Cook county, aforesaid, a certified copy whereof is herewith filed as part of this bill, marked Exhibit A. And as the original is out of the power and possession of these complainants, they require the defendants hereinafter named to produce it on the hearing of this cause, or complainants will offer said certified copy.

Your complainants further show that said George W. Lee and Laura S. Lee, his wife, on the fifth day of July, A. D. 1842, for the consideration of thirty three hundred and sixty dollars ($3,360 00) conveyed the said
5 premises to Lois Cogswell, which deed was recorded June 23d, 1843, in book 9, page 245, of the records of Cook county, aforesaid, a certified copy whereof is herewith filed as part of this bill, marked Exhibit B, and the original whereof will be offered in evidence on the hearing of this cause.

Complainants further show that said Lois Cogswell, on the sixteenth day of August, A. D. 1849, by deed of that date, for the consideration of one thousand dollars ($1,000) conveyed the same premises to Jonathan Cogswell, which deed was recorded February thirteenth, A. D. 1849, in book 30, page 134, of the records of said Cook county, a certified copy whereof is filed herewith, marked Exhibit C, and will be offered in evidence on the hearing of this cause, unless defendants shall produce the original, which is not in the power or possession of these complainants.

Complainants further show unto your honors that, on the fifth day of February, A. D. 1853, said Jonathan Cogswell, and wife, by deed of that date, conveyed the north forty feet of said lot four (4) in block fifty-three (53) to Michael Nugent and Owen Owens, for the consideration of three thousand and fifty dollars, which deed was recorded February tenth, A. D. 1855, in book 89, page 57, of the records of said Cook county, a certified copy whereof is filed herewith as part of this bill, marked Exhibit D, which will be offered in evidence on the hearing of this cause, unless de-
6 fendants shall produce the original, which is not in the power or possession of these complainants.

Complainants further shew that they, with one Anson G. Phelps, since deceased, by the name and style of Phelps, Dodge & Co., on the thirtieth day of October, A. D. 1855, recorded a judgment in the Cook county circuit court, in the State of Illinois, for the sum of twenty-seven hundred and twenty-two dollars and eighty-two cents debt, and four dollars and seventy cents costs of suit, against said Michael Nugent; that on or about the 27th day of November, A. D. 1856, a writ of execution issued upon said judgment, directed to the sheriff of Cook county, aforesaid, who, by virtue thereof, levied on the said north forty feet of lot number four (4) in block

fifty-three (53) aforesaid; and on the 20th day of March, A. D. 1856, sold the same in due course of law to your orators and said Anson G. Phelps, since deceased; and on the 20th day of June, A. D. 1857, neither the said Nugent nor any one else having redeemed the said premises from said sale, the sheriff of Cook county, aforesaid, conveyed the same to your orators and said Anson G. Phelps, since deceased, on or about the 20th day of June, A. D. 1857, and your orators now hold the same as the owners thereof, as by said sheriff's deed; and the transcript of the record of said judgment and judicial proceedings herewith filed as part of this bill, marked Exhibit
7 E, will fully appear, and the same will be offered in evidence on the hearing of this cause.

Complainants further shew that, on the first day of September, A. D. 1854, the said Michael Nugent and Owen Owens gave to Horatio G. Shumway and Johnson Wheeler, in trust for Bacon Wheeler, a deed of trust on the north forty feet of said lot four, (4,) in block fifty-three, (53,) to secure the payment of thirty-five hundred dollars, with interest, at ten per cent., payable semi-annually, in two years from that date; and that afterwards, on or about the first day of April, A. D. 1856, the said Bacon Wheeler sold and assigned the said debt, together with the securities aforesaid, to these complainants and said Anson G. Phelps, since deceased; that the said debt is wholly unpaid, and these complainants are the absolute owners thereof, as by a certified copy of said deed of trust herewith filed, marked Exhibit F, the original *the original* whereof will be offered in evidence on the hearing of this cause will more fully appear.

Complainants further shew that all of the said owners and grantors of said premises have, during the respective times of their owning the same, been in the full and complete possession of said premises, have paid all the taxes and assessments thereon, have made valuable and costly improvements, and held the quiet and peaceable possession thereof since the same were granted by the State of Illinois, until the occurrences here-
8 inafter set forth.

These complainants further show unto your honor, that on or about the 20th day of June, A. D. 1857, they took possession of said premises under and by virtue of the deed to them from the sheriff as aforesaid, and also under the trust deed from Nugent and Owens, which these complainants then owned, and have ever since, either in person or by their tenants, and now have, full, complete, and actual possession of the said north forty feet of lot number four, (4,) in block fifty-three, (53,) and have made large expenditures thereon for improvements, and have paid large sums of money for taxes and assessments, being nearly twelve hundred dollars ($1,200) for street assessments and taxes alone.

Complainants further show that they purchased said premises in good faith in satisfaction of a large *bona fide* debt, and that neither they, and so far as known to these complainants, none of the aforesaid owners of said premises had any notice of any adverse claim to said premises, existing in, or set up by any person to the same, until long after they purchased the same on their judgment and executions against said Michael Nugent.

Complainants further show that on, to wit, the fourth day of August, A. D. 1858, Lewis H. Lee, and Harriet T. Lee, and George S. Lee, by his
9 next friend, John G. Thurston, claiming to be the heirs-at-law of George W. Lee, who died some time in November, 1842, (as these complainants are advised,) commenced their action of ejectments in this court, one against Alice Nugent, the tenants of these complainants, occupying the north twenty feet of the north forty feet of said lot four, (4,) in block fifty-three (53) aforesaid, for the recovery of said twenty feet, and one against F. S. Collins, also a tenant of these complainants, occupying

as such tenant the south twenty feet of the north forty feet of said lot four, (4,) in block fifty-three, claiming the rights to recover, as the heirs of said George W. Lee, the undivided nine-tenths (9-10) of said premises, alleging, that although their father died in November, A. D. 1842, yet, by reason of their infancy, their rights to bring said action is not bound by any statutes of limitation, as they have brought their action within three years after coming of lawful age, and that on the 21st day of July, 1859, a judgment in each of above cases was rendered in favor of the p'ffs in each of said cases for the recovery of the possession of the premises in each case demanded, and are now *are* about to recover and take such possession of said premises unless restrained by the order of this court.

Complainants further show that to maintain their said actions of ejectments, the heirs of George W. Lee allege that their father never made or delivered the said deed from himself to Lois Cogswell above referred
10 to, but insist that the same was made and delivered after his death, by some one who, without lawful authority, pretended to act in his name and for him; whereas your orators state the facts to be, that said George W. Lee and Laura S., his wife, did make, sign, seal, and acknowledge said deed from them to Lois Cogswell, and that the same was well and properly delivered as his deed to said Lois Cogswell, either by him in person, or by some one by him lawfully authorized so to do.

Your orators further shew unto your honors, that said heirs of George W. Lee at other times pretend that said Lois Cogswell had no knowledge of the making and delivery of said deed, either to her personally or to any one for her; whereas your orators state the fact to be, that said deed was made and delivered pursuant to an express undertaking and agreement of said George W. Lee to convey the same to her, and that either she in person, or her authorized and lawful agent and attorney, received said deed from said George W. Lee, or his agent or attorney, in pursuance of such previous agreement and undertaking of the said Lee with the said Lois Cogswell.

Complainants further show unto your honors, that at other times the said heirs of George W. Lee pretend that said deed from him to Lois Cogswell was made without any good or valuable consideration paid or agreed
11 to be paid by said Lois Cogswell to said George W. Lee, and so said deed was bad as against the claims of said heirs; whereas the the truth is, as these complainants are informed and believe, said deed was founded upon a very good and valuable consideration, to wit, that at the time of making the same the said Lee was largely indebted to said Louis Cogswell, either solely by herself or jointly with other persons, to your orators unknown, and that in pursuance of an undertaking between said Lee and Cogswell, he made, executed, and delivered said deed in full or part payment of such indebtedness, and that the same was received by her, the said Lois Cogswell, as a full payment, at least to the extent of the consideration named in said deed of such indebtedness.

Complainants further show unto your honors, that at other times the said heirs of George W. Lee pretend that said deed from him to Lois Cogswell was an entire fabrication and forgery, or if any part genuine, that he never delivered it to said Lois Cogswell, nor authorized any one to deliver it for him; that he was a stranger to said Lois Cogswell, had no business dealings with her, or any one for her, and so said deed, although it would appear from the records to be complete and perfect, vesting an absolute estate in said Lois Cogswell, was void, as being either in whole or part a forgery, or as having never been delivered by said George W. Lee
12 to the grantee named therein, and also being without any consideration; whereas your orators state the facts and truth to be as follows:

That on or about the fourth day of May, A. D. 1836, said George W. Lee, who then lived in the State of Connecticut, agreed with said Lois Cogswell, Jonathan Cogswell, and one Franklin S. Kinney, who then resided in Connecticut, or the city and State of New York, and who were all connected either by blood or marriage, that said Lee should remove to the western States and make investments of money to be furnished by said Cogswell, Kinney, and himself, for the mutual benefit of all said parties; that in pursuance of this arrangement, he came to the State of Illinois, some time in the year 1836, and made large purchases of lands and lots in the different counties and cities in this State, for the joint account of himself and said Kinney and Cogswell; that he took some of the titles in his own name and some in the name of the other parties, but whatever titles he took or held in his own name were taken and held in trust for the benefit of said Cogswells and himself.

Said Lois Cogswell, as your orators are advised and believe, was a maiden laidy, not much conversant with business; that Jonathan Cogswell was a minister of the gospel, also little acquainted with business; and that said Kinney was a lawyer, living in New York city, and made all the
13 arrangements and conducted all the business relating to said enterprise of buying lands in the west, in behalf of said Cogswells with said Lee.

Complainants further show unto your honors, that said Lee purchased, among other lots of property, the said lot four, in block fifty-three, above mentioned, on joint account of said Cogwells and himself; that after said purchase in 1836, the value of the property so purchased greatly depreciated, and said Geo. W. Lee became insolvent, and largely indebted to said Cogswells; and *and* some one or all of them, that having bought a great number of lots at land sales in the city of Chicago on joint account of the Cogswells and himself, and made partial payments thereon, the purchasers of said lots, along with others, were, by a law of the State of Illinois, commonly called the canal relief law, allowed to consolidate their payments of different lots upon one or more lots so purchased and partially paid for, owning those so selected and relinquishing the others.

That said Lee availed himself of the provisions of this law for the benefit of himself, said Cogswells; and from among the lots which he so purchased on their joint account he selected, among others, said lot four, block fifty-four, which had been bought with the joint funds of said Cogswells and himself, and received a conveyance or patent therefor from the State of Illinois, but that he held such title in trust for said Cogs-
14 wells and himself so far as each had contributed to the purchase thereof.

At this time said Lee was wholly insolvent, and being largely indebted to said and the Cogswells for money advanced him; and said Jonathan Cogswell then held a judgment against him for five thousand six hundred and fifty-one dollars, rendered in the circuit court of Will county, Illinois, on account of said indebtedness, and that to pay and discharge said indebtedness, whether evidenced by said judgment or otherwise, said George W. Lee offered to convey to them or either one of said Cogswells, or said Kinney, as they might prefer or direct, in full or part payment of such indebtedness, among other lots and lands so bought by him, said lot four, in block fifty-three, which offer so made by him was by them accepted and he was notified of their acceptance of it.

And thereupon your orators charge in the alternative, and state the fact to be either that said George W. Lee, with his wife, Laura S. Lee, made, executed, acknowledged, and delivered to said Lois Cogswell, or to said Kinney, as agent and agent and attorney for her, a deed of said lot four in block fifty-

three, in consideration of his indebtedness to her and her brother and said Kinney, or else that he and his said wife, Laura S. Lee, made, executed, and acknowledged a deed of said lot four in block fifty-three, intending to
15 convey said lot to her, and did before the delivery of it, and that after his decease it was by some one delivered to said Lois Cogswell, her agent or attorney. But if the latter statement should on proof appear the true one, your orators then charge that such delivery was in pursuance and in execution of the previous offer and agreement of said Lee to convey the same in consideration of his said indebtedness as above stated, which had been accepted and he notified of such acceptance, and so that said Lee had received the full benefit and consideration of said conveyance, so far as it was founded upon any interest of his in said premises in his indebtedness for money previously advanced him by said Lois Cogswell, and that he held the legal title estate in said premises merely in trust for her, the said Lois Cogswell.

Complainants further charge and state the fact to be, that if it should on proof appear that said deed from George W. Lee and wife was not delivered by him in his lifetime, and that he made and acknowledged the same, so far as his interest in said lot was concerned, (which your orators state, on information and belief, only amounted at the date of said deed to the sum of about $2,172, whereas the said lot was of much greater value, and the indebtedness of said Lee to said Cogswells was a still larger sum,) in part performance of his said agreement to convey the same to said Cogswells for the consideration aforesaid, and that his death interrupted and prevented the full com-
16 pletion of said agreement, but that in equity, from the time of the acceptance of his offer to convey the same, he held the title in trust for said Cogswells or one of them, as they might elect, and ought in equity and good conscience, and so ought his heirs, to convey the said legal estate, should it appear that he or they hold the same, to your orators in confirmation of their equitable estate in said premises.

Complainants further show unto your honors, upon information and belief, that said George W. Lee died intestate in November, A. D. 1842, leaving a widow, Laura S. Lee, who then lived with him in Illinois; that one Benjamin T. Lee, his brother, was appointed administrator on his estate, who also lived in Illinois; that after partially administering on said estate he was succeeded by —— ——, who has not yet completed administration of said estate; that said estate was largely and hopelessly insolvent, but neither the said administrators, nor any creditors of said estate, nor the widow of said George W. Lee, have ever asserted any claim, title, or estate in said premises, paid any tax or assessment thereon, or exercised any acts of ownership over them.

And your orators further show unto your honors, that by reason of the premises they ought in equity if not in law, to be decreed and held the absolute owners of said lot four, block fifty three, without molestation from the heirs of George W. Lee, or any person claiming under them, but that
17 said heirs, insisting that their father, George W. Lee, never made any conveyance of said lot, or if any deed or conveyance was prepared that it was never delivered, are now prosecuting their said actions of ejectment for the recovery of said undivided nine-tenths (9-10) of the north forty feet of said lot four, in block fifty-three, in this honorable court, and threaten to prosecute the same to final judgment and recovery of the same from these complainants, to their great loss and damage.

To the end, therefore, that complete and absolute redress and equity be granted to your orators, they make the said Laura S. Lee, widow of said George W. Lee, deceased, who is a citizen of the State of New York, Lewis H. Lee, Harriett T. Lee, George S. Lee, who are citizens of the State of

Massachusetts, the last two of whom are infants under the ages of eighteen and twenty-one years, respectively, John G. Thurston, who is a citizen of the State of Massachusetts, and John F. Farnsworth, John L. Beveridge and Julius G. Lumbard, who are citizens of the State of Illinois, and the agents and attornies of the said widow and heirs-at-law of George W. Lee, deceased, parties defendant to this bill, and if any of said defendants are now without the jurisdiction of this honorable court, your orators pray for proper process against each of the defendants who is now without this jurisdiction, when he or she may come within the jurisdiction of this court.

18 And your orators pray for the usual process of summons directed to each of said defendants, requiring them to appear and answer the matters herein before set forth, fully and particularly, as if the same were here repeated in interrogatories, but not under oath, the oaths of each being specially waived.

And may it please your honors to grant unto your orators a writ of injunction directed to said Laura S. Lee, widow of the said George W. Lee, Lewis H. Lee, Harriett T. Lee, and George S. Lee, heirs of George W. Lee, deceased, John G. Thurston, John F. Farnsworth, John L. Beveridge and Julius G. Lumbard, their agents, attornies and servants, enjoining and restraining them and each of them from prosecuting said actions of ejectments for the recovery of said premises, or any other action or claims therefor, until the further order of the court in the premises, and that such injunction may upon the hearing of this cause may be made perpetual.

And your orators further pray that in case it should appear that said deed from George W. Lee was never completely delivered, that Laura S. Lee, widow, and Lewis H. Lee, Harriet T. Lee and George S. Lee, children of George W. Lee, deceased, may be decreed to convey all their right, title, and interest, in said premises, to wit: the forty feet of lot four, in block fifty-three, original town of Chicago, to your orators, and in default of their compliance with such order and decree that the master in chancery, or some proper officer of this court, may in their stead make such conveyances

19 of their interest and estate in said premises. And may it please your honors to grant such other and further relief as justice and equity may require, and as in duty bounty your orators will ever pray.

WILLIAM E. DODGE.
DANIEL JAMES.
JAMES STOKES.
D. WILLIS JAMES.
WM. E. DODGE, JR.

By their solicitor, SAM'L W. FULLER.

SCAMMON, MCCAGG & FULLER,
Of counsel for comp'ts.

Samuel W. Fuller, of lawful age, being duly sworn, on oath says, that I am the agent and attorney of the complainants in the foregoing bill of complaint, that I have read the same and know its contents, that the statements therein contained, so far as the same are positive are here in substance and in fact, and so far as the same are stated to be true upon information and belief, that as such agent and attorney I have good reason to believe and do believe the same to be true, and further I say not.

SAM'L W. FULLER.

Subscribed and sworn to before me, July 21, 1859.

WILLIAM H. BRADLEY, *Clerk.*

Endorsed: Filed July 22, 1859.

WM. H. BRADLEY, *Clerk.*

20 And afterwards, to wit. on the 5th day of September, A. D. 1859, said defendants, Lewis H. Lee, Harriet T. Lee, George S. Lee, and John G. Thurston, by their solicitors, Messrs. Farnsworth, Beveridge & Lumbard, come and enter their appearance herein.

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

Circuit court, Sept. term, 1859.

LEWIS H. LEE *et al.* *ad.* WM. E. DODGE *et al.* } In chancery.

The clerk of said court will enter our appearance in said cause for the defendants, Lewis H. Lee, Harriet T. Lee, George S. Lee and John G. Thurston.

FARNSWORTH, BEVERIDGE & LUMBARD,
Sol's for s'd def'ts.

Endorsed: Filed Sept. 5, 1859.

WM. H. BRADLEY, *Clk.*

21 And afterwards, to wit: on the 3d day of October, A. D. 1859, the defendants aforesaid, by their solicitors, come and file their answer in the words and figures following, to wit:

Answer of defendants.

United States circuit court, northern district of Illinois, in chancery.

The joint and several answers of Lewis H. Lee, Harriet T. Lee and George S. Lee, a minor, by his guardian and next friend, John G. Thurston, defendants, to the bill of complaint of Wm. E. Dodge, Daniel James, James Stokes, D. Willis James, and Wm. E. Dodge, jr, filed herein.

These defendants now, and at all times, saving and reserving unto themselves all benefit of exception to the many insufficiencies, errors and imperfections of the said bill of complaint, and protesting that the same and the matters therein alleged are not sufficient to require these defendants to make answer thereunto, nevertheless, they answering, say: They admit the purchase of the said lot 4, in block 53, in the original town of Chicago, by the said George W. Lee, from the State of Illinois, and the issuing and
22 recording of the patent therefor. These defendants deny that the said George W. Lee, and Laura, his wife, on the 5th day of July, 1842, or at any other time, conveyed the said premises to Lois Cogswell, in consideration of thirty-three hundred and sixty dollars, ($3,360,) or for any other consideration.

These defendants are not advised, save by said bill of complaint, whether said Lois Cogswell conveyed the said lot to Jonathan Cogswell or not, but they have no doubt that such is the fact. They have no knowledge, but presume it is true, that Jonathan Cogswell conveyed a part of said lot (to wit, the north 40 feet) to Michael Nugent and Owen Owens, as stated in said bill of complaint.

These defendants have no knowledge and are not advised, save by said bill of the rendition of said judgment in favor of said complainants against said Nugent, as in said bill stated, nor of the subsequent proceedings thereon, the sale, sheriff's deed, &c., nor have they any knowledge, save from said bill, of the existence of the said trust deed in said bill mentioned, nor

of the ownership thereof, and consequently they neither admit nor
23 deny the same, but as to all such matters they leave the said complainants to make such proof hereof as they shall be advised.

These defendants, further answering, admit that since the conveyance of said premises to the said Nugent and Owens, they have made valuable improvements on the same, and they presume that the said several persons have from time to time paid the taxes upon said premises.

Defendants admit that complainants by their tenants, as therein stated, have possession of the said north 40 feet of said lot, but defendants are not advised, save by said bill, whether the complainants purchased said premises and said trust deed, as stated, in good faith or not, but leave them to such proof thereof as they may deem adviseable. But defendants, upon information and belief, deny that all of said persons acted in good faith without notice of any adverse claim to said premises, but on the contrary aver that the said Nugent and Owens, and the said Cogswell, did have notice of the claims of these defendants to said premises long before the complainants became interested in the same. Defendants admit that the said
24 George W. Lee died at about the time stated in said bill of complaint, and that the said Lewis H., Harriet T., and George S. Lee, are heirs-at-law and the natural children of the said George W. Lee. They also admit of the bringing of actions of ejectments for the recovery of the possession of said premises, as stated in said bill of complaint, and also that judgments have been rendered in said suits in their favor.

And defendants aver that it is true that they are not barred from the prosecution of said actions by any statute of limitations by reason of their non-age.

These defendants, further answering, say that upon the decease of the said George W. Lee he left one other child, who has died, and who was also a minor and without issue at the time of its decease; that these three defendants are the only surviving children. These defendants, further answering, say that they are advised that it is true that the said George W. Lee, their ancestor, did have some dealings with Lois and Jonathan Cogswell and Franklin S. Kinney, and that for the amount which the said George W.
25 was indebted to them they recovered a judgment in the circuit court of Will county, in the State of Illinois, on the 14th day of March, A. D. 1840, in the name and in favor of Jonathan Cogswell, which judgment was for the sum of five thousand six hundred and fifty-one dollars and thirty-two cents, besides costs of suit. That the said judgment embraced all the indebtedness of every name and nature of the said George W. to Lois and Jonathan Cogswell and to Franklin S. Kinney.

And these defendants, further answering, say upon information and belief, that at the time of the death of their father, the said George W., the greater part of said judgment remained unpaid and unsatisfied, and that the said Kinney came out to the State of Illinois and had an interview with the administrator of the estate of the said George W., for the purpose of arranging and settling the said judgment. And defendants further say, that among other papers of the said George W. the administrator found the paper which the claimants have denominated a deed, bearing date the 5th of July, A. D.
1842, being in the form of a deed containing a description of the
26 said lot 4, in block 53, in the original town of Chicago, with a certificate of acknowledgment from a justice of the peace of Winnebago county, Illinois, thereon, but containing *no name* as grantee in said deed. That upon settling the said judgment against the said George W., his administrator, with the full knowledge of the said Kinney, and by his request, filled into said paper the name of Lois Cogswell as grantee, and delivered the same to the said Kinney as a deed of said lot, in part satisfaction of the

said judgment and of the indebtedness aforesaid of George W. Lee to the said Lois and Jonathan Cogswell and the said Kinney. That the said Kinney acted as the agent of the said Lois and the said Jonathan in this transaction. And these defendants aver that the filling up and delivery of the said deed as aforesaid, after the decease of the said George W., was a void and null act, and could and did pass no title whatever. These defendants deny, upon information and belief, that the said lot four, in block 53, was originally purchased by said Lee on the joint account or for the benefit of the said Cogswell, Kinney and himself, or that they or any of them
27 contributed any part of the consideration therefor, or that he held the the title to the same in trust for said Cogswell and Kinney or either of them.

And these defendants, further answering, deny all knowledge of any offer on the part of their father, the said George W. Lee, to convey the said lot to the said Cogswells or the said Kinney, as stated in the said bill, or of any acceptance of such offer by them, or either of them; and, upon information and belief, they deny the same altogether; and they aver that, if there ever was any such offer or acceptance, the same was not carried into effect, nor was the same acted upon by the said Cogswells and Kinney, or in any manner observed by them in their settlement with the administrator after the decease of the said Lee.

These defendants, upon information and belief, deny all equities, or supposed equities, on the part of the said complainants to the said premises, or any part of the same, by reason of the dealings between said Cogswells, Kinney, and the said Lee, or on account of the said Lee having received any money or assistance from the said Cogswells or the said Kinney,
28 for they aver that whatever money or assistance the said Lee received from them was, by the said parties and by the said Cogswells, Kinney, and the administrator of the said Lee, treated as a loan and sued for and recovered as such.

And these defendants aver that any other matter or thing in the said bill of complaint contained material to be answered, and not herein particularly answered, is not true, according to their information and belief. All which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court may direct; and pray, hence, to be dismissed with their costs and charges in this behalf most wrongfully sustained, &c.

LEWIS H. LEE.
HARRIET T. LEE.
GEORGE S. LEE, by his next friend
JOHN G. THURSTON,
Per JNO. L. BEVERIDGE, *Sol'r.*

FARNSWORTH, BEV. & LUMBARD,
Sol'ts for Defendants.

Endorsed: Filed Oct. 3d, 1859.

WM. H. BRADLEY, *Cl'k.*

29 And afterwards, to wit, on the 16th day of November, A. D. 1860' the said complainants, by their solicitors, came and filed the following replication to said answer as follows, to wit:

Replication.

UNITED STATES OF AMERICA,
Northern District of Illinois:

U. S. circuit court, Oct. term, 1860.

WILLIAM E. DODGE *et al.*
v.
LEWIS H. LEE *et al.*
} In chancery.

The replication of William E. Dodge and others, complainants, to the answer of Lewis H. Lee and others, defendants.

These, repliants saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove, as this honorable court shall direct; and humbly prays as in and by their said bill they have already prayed.

SCAMMON, McCAGG & FULLER,
Sol's for Compl'ts.

Endorsed: Filed Nov. 16, 1860.

WM. H. BRADLEY, *Clk.*

And afterwards, to wit, on the 1st day of July, A. D. 1861, in the record of the proceedings of said court in said cause is the following entry, to wit:

WILLIAM E. DODGE, DANIEL JAMES, JAMES STOKES, D. WILLIS, JAMES, and WILLIAM E. DODGE, junior,
v
LEWIS H. LEE, HARRIET T. LEE, GEORGE S. LEE, LAURA S. LEE, JOHN G. THURSTON, JOHN T. FARNSWORTH, JOHN L. BEVERIDGE, and JULIUS G. LOMBARD.
} In chancery.

Now come the parties, by their solicitors, and thereupon it is ordered by the court that the proofs be closed within fifteen days, and by agreement this cause is set down for hearing.

And afterwards, to wit, on the 26th day of November, A. D. 1862, in the record of the proceedings of said court in the said cause is the following entry, to wit:

WILLIAM E. DODGE, DANIEL JAMES, JAMES STOKES, D. WILLIS, JAMES and WILLIAM E. DODGE, junior,
v.
LEWIS H. LEE, HARRIET T. LEE, GEORGE S. LEE, LAURA S. LEE, JOHN G. THURSTON, JOHN F. FARNSWORTH, JOHN L. BEVERIDGE, and JULIUS G. LOMBARD. } Chancery.

32 This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, to wit: That the defendants, Lewis H. Lee, Harriet T. Lee, and George S. Lee, children and heirs-at-law of George W. Lee, deceased, do, within thirty days from the date of entry of this decree, make, execute, acknowledge, and deliver to the complainants suitable deeds of conveyance of all their right, title, interest, and estate in the premises described in the bill in this cause, and which are more fully and particularly described as follows: The north forty feet of lot four, (4,) in block fifty-three, (53,) in the original town of Chicago. And it is further ordered, adjudged, and decreed, that, in default of the execution and delivery by said defendants of proper deeds of conveyance of their interest, title, and estate in said premises to complainants within the time herein above limited for that purpose, that the master in chancery of this court thereupon make, execute, and deliver to complainants a proper deed of conveyance of all the said title, interest, and estate of said Lewis H. Lee, Harriet T. Lee, and
33 George S. Lee, children and heirs-at-law of George W. Lee, deceased, in the premises above described. And it is further ordered, adjudged, and decreed by the court, that upon the execution and delivery of said deed or deeds of conveyance by said defendants, or in case of their default by the master in chancery of this court, as above described, that thereupon the said George S. Lee, Harriet T. Lee, and Lewis H. Lee, and all persons claiming, or to claim, any interest, title, or estate in the said north forty feet of lot four, block fifty-three, original town of Chicago, Cook county, State of Illinois, by, from, or under them, or any one of them, shall be forever enjoined from asserting any title, claim, or interest therein as heirs of said George W. Lee, deceased.

And the court does further order, adjudge, and decree, that said Lewis H. Lee, Harriet T. Lee, and George S. Lee pay the costs of this suit, and that the bill be dismissed as to the defendants John F. Farnsworth, John L. Beveridge, Julius G. Lumbard, John G. Thurston, and Laura S. Lee.

And thereupon the defendants, George S. Lee, Harriet T. Lee, and
34 Lewis H. Lee pray an appeal to the Supreme Court of the United States.

35 And afterwards, to wit, on the 27th day of November, A. D. 1862, the following stipulation was filed by the parties, to wit:

In the United States circuit court, northern district of Illinois.

DODGE *et als.*
v. } In chancery.
LEE *et als.*

Stipulations as to proofs.

It is hereby stipulated and agreed, that on the hearing defendants waived the production of complainants of the following deeds and conveyances in the bill in this cause referred to, being the complainants' apparent chain of title to the premises in controversy in this cause, "except No. 2, which was produced," to wit:

1. Patent from the State of Illinois to George W. Lee, dated August 27, 1841, of lot 4, block 53, in the original town of Chicago, recorded April 23, 1842.

36 2. George W. Lee and wife to Lois Cogswell; deed dated July 5th, 1842; acknowledged July 12, 1842; recorded June 23d, 1843. Same premises. This was the deed referred to in the depositions of Franklin S. Kinney and Benjamin T. Lee, in this cause, and reads as follows:

"This indenture, entered into this fifth day of July, A. D. 1842, by and between George W. Lee and Laura S., his wife, parties of the first part, of Kishwaukee, and State of Illinois, and Lois Cogswell, of New York, of the second part, witnesseth: That for and in consideration of the sum of thirty-three hundred and sixty dollars paid to the said parties of the first part by Lois Cogswell, the receipt whereof is hereby acknowledged, we, George W. Lee and Laura S., hereby grant, bargain, sell, and convey, unto the said party of the second part, his heirs and assigns forever, all that certain lot, piece or parcel of land, known as lot No. four, in block No. fifty-three,

37 in the original town of Chicago, Illinois, to have and to hold the same free from all claims or incumbrances of the said parties of the first part.

"And the said George W. and Laura S., for themselves, their heirs, administrators and assigns, doth covenant with the said Lois Cogswell, that at and until the ensealing of these presents, they were well seized of the aforesaid lot in fee simple, and hath good right to bargain and sell the same in manner and form aforesaid, and that the same is free from all incumbrance whatsoever.

"And the said parties of the first part doth covenant that they will forever warrant and defend the party of the second part in the quiet and peaceable possession of the within bargained premises against all and every person claiming or to claim all or any part of the same.

"In witness whereof, we have hereunto set our hands and seals, at Kishwaukee, the year and day first above written.

"GEORGE W. LEE. [SEAL.]
"LAURA S. LEE. [SEAL.]

"Witness.

"STATE OF ILLINOIS, *Winnebago county, ss:*

"I, Duncan Ferguson, a justice of the peace of said county, do certify that George W. Lee and Laura his wife, whose signatures appear to the

38 foregoing deed, and who are personally known to me to be the persons described in and who executed the same, did severally acknowledge that they had executed the said conveyance for the uses and purposes therein mentioned. And the said Laura Lee having by me been made acquainted with the contents of said deed, and examined separate and apart from her said husband, acknowledged that she executed the same and relinquished her dower to the premises therein conveyed voluntarily, freely, and without compulsion of her said husband.

"Given under my hand and seal this 12th day of July, 1842.

"DAN. FERGUSON, [L. S.]
"*Justice of the Peace.*

"STATE OF ILLINOIS, *Winnebago county:*

"I, Seldon M. Church, clerk of the county commissioners' court of said county, do certify that Duncan Ferguson, whose signature appears to the certificate of acknowledgment accompanying the annexed deed, was at the time the said certificate bears date an acting justice of the peace in and for said county, duly commissioned and sworn, and as such full faith

39 and credit are due and should be given to all his official acts; and further, that I am well acquainted with the handwriting of such justice, and do believe the signature thereunto attached to be genuine.

"Given under my hand and the seal of said court, at Rockford, this 10th day of June, A. D. 1843.

[L. S.] "SELDON M. CHURCH,
"*Clk C. Comm's' Court, Winnebago County.*

"Endorsed: George W. Lee and wife to Lois Cogswell. Deed. L. 4, block 53, original town Chicago.

"STATE OF ILLINOIS, *Cook county:*

"On the 23d day of June, A. D. 1843, the within deed was left for record and duly recorded in book No. 9, of deeds, page 245.

"ELI B. WILLIAMS, *Recorder.*"

40 3. Lois Cogswell to Jonathan Cogswell. Deed dated Jan'y 16th, 1849. Recorded Feb'y 13, 1849. Same premises.

4. Jonathan Cogswell and wife to Michael Nugent, Owen Owens. Deed dated Feb'y 8, 1855. Recorded Feb'y 10, 1855. North 40 feet of lot 4, block 53, old town of Chicago, premises in question in this case.

5. Record of judgment in favor of complainants against Michael Nugent, Oct. 30, 1855. Execution issued on same dated Nov. 27, 1856. Sheriff's deed of same premises to complainants June 20, 1857, by virtue of sale upon said judgment.

6. Michael Nugent and Owen Owens to H. G. Shumway. Deed of
41 trust dated April 1, 1856, of same premises to secure debt of grantors to Bacon Wheeler, which, with the securities, was assigned to complainants.

Complainants read in evidence the deposition of Franklin S. Kinney, with the exhibits thereto attached.

42 United States circuit court for northern district of Illinois.

WILLIAM E. DODGE *et al.*
vs.
LAURA S. LEE, LEWIS H. LEE *et al.* } In chancery.

It is hereby stipulated and agreed between the parties to the above entitled suit that the testimony of Franklin S. Kinney, a witness on the part of the complainants therein, may be taken in the city of New York, commencing on the 29th day of August, instant, before a United States court commissioner or notary public, without notic, upon interrogatories then and there to be propounded; which testimony, when taken, may be used and read in evidence on the hearing of said cause, subject only to such objections as may be taken to the legal sufficiency of the same.

A notice of the hour and place of taking such testimony, and the officer before whom the same is to be taken, to be left, prior to such taking, at the Astor House, in said city of New York, addressed to the undersigned, J. F. Farnsworth.

J. F. FARNSWORTH,
Counsel for Def'ts.
SCAMMON, McCAGG & FULLER,
For Comp'ts.

CHICAGO, *August 10th*, 1859.

43 It is further consented and agreed that the time for taking the deposition referred to in the above and foregoing stipulation shall be deferred to the 30th day of August, instant, and notice of the time and place of taking same, and the officer before whom same is to be taken, is admitted to have been given.

J. F. FARNSWORTH, *Sol. for Def'ts.*
SCAMMON, McCAGG & FULLER,
For Compl'ts.

NEW YORK, *August 29th*, 1859.

44 Circuit court of the United States for northern district of Illinois.

WM. E. DODGE *et al.*
vs.
LAURA S. LEE, LEWIS H. LEE *et al.* } In chancery.

It is hereby stipulated and agreed between the parties to the above suit that copies of the several exhibits mentioned and specified in the deposition of Franklin S. Kinney, this day taken, in said cause, in the city of New York, may be annexed to said Kinney's deposition, in the place of said original exhibits, provided that said original exhibits shall be produced by the complainants on the hearing of said cause.

And that said deposition may, when completed by the officer taking the same, be taken by E. B. McCagg, and by him delivered to the clerk of this court in Chicago.

And that said deposition, as it is taken, and in the form it is taken, being the clerical part of the same, except said copies of said exhibits in the handwriting of said McCagg, may be read in evidence on the hearing of this cause, subject to all legal exceptions to the materiality or sufficiency of the same, or to the legality of the questions and answers therein
45 contained.

Said McCagg stipulating to take said originals with him to Chicago.

J. F. FARNSWORTH,
Of Counsel for Def'ts.
SCAMMON, McCAGG & FULLER,
For Compl'ts.

NEW YORK, *August 30th*, 1859.

46 Circuit court of the United States in and for northern district of Illinois.

WILLIAM E. DODGE *et al.*
vs
LAURA S. LEE, LEWIS H. LEE *et al.* }

The deposition of Franklin S. Kinney, a witness in the above-entitled cause produced on the part of the complainants before me, Nathaniel C. Kinney, a notary public in and for the city, county, and State of New York, this 30th day of August, A. D. 1859, which testimony is so taken pursuant to the stipulation hereto annexed; there being before me, at the time of taking said deposition, the said complainants, by E. B. McCagg, their solicitor, and the said defendants, by J. F. Farnsworth, their solicitor.

The said Franklin S. Kinney, being first duly sworn, deposes and says:

First interrogatory. What is your age, name, occupation, and place of residence? Do you know the plaintiffs and defendants, or either of them; and if so, for how long a time have you known them?

47 Answer. Franklin S. Kinney is my name; fifty-two years of age; I reside at New Brunswick, New Jersey; I am not in any regular busi-

ness now, having retired from the practice of the bar several years ago; I know one or two of the plaintiffs personally; do not know the others; I don't know the defendants, except the widow of George W. Lee, deceased; I have known Mr. Stokes for twenty years or more; I have known one of the Messrs. Dodge for, perhaps, ten years.

Interrogatory second. Do you know Lois Cogswell and Jonathan Cogswell; and if so, for how long a time have you known them, and where do they reside?

Answer. I have known both of them since about the year 1830. Jonathan Cogswell resides at New Brunswick, New Jersey; Lois Cogswell is a single lady, and spends her time partly with her niece, Mrs. Dixon, at Hartford, Connecticut, where she is at present, and partly in New York, and sometimes with her friends in New Brunswick.

Interrogatory third. Have you ever acted as the agent or legal adviser of the said Cogswells; and if so, when, and for how long a time?

48 Answer. My wife is the daughter of Jonathan Cogswell, and niece of Lois Cogswell, and since my marriage, which was in 1833, I have frequently acted for them as their legal adviser; though I believe they have occasionally had, or Doct. Cogswell has had, other legal advisers, and I have frequently transacted business for them as their agent.

Interrogatory fourth. Have you at any time known George W. Lee; and if so, when, and for how long a time? Where did he reside when you last knew him, and for how long a time had he there resided?

Answer. My acquaintance with George W. Lee commenced about the year 1827, and was continued until his death, which, I believe, happened in the fall of 1842; Lee resided for the latter part of his life, I should say five or six years, at Kishwaukee, Illinois.

Interrogatory fifth. Where did said Lee reside when you first knew him? And if you can, state what was the reason of his removal to Illinois.

49 Answer. He resided in the city of New York when I first knew him, and continued to reside there until he removed to Illinois. He had made considerable investments and speculations in real estate in Illinois, and removed there for the purpose of managing and taking care of them.

Interrogatory sixth. At, or about, or previous to the time of Lee's removal to Illinois, was there any agreement between said Lee, the Cogswells, and yourself in reference to the purchase of lands in Illinois, or in the west? If so, produce same.

Answer. Such an agreement was made some two years before he removed to the west, dated the fourth day of May, 1836, (witness here produces the agreement, marked Exhibit A, which is annexed to this deposition and forms a part thereof,) which I now produce.

Interrogatory seventh. Are or was you at that time acquainted with the handwriting of the several parties who subscribed the same; and if so, are the signaturest hereto the genuine signatures of such persons, respectively?

50 Answer I was acquainted with the handwriting of all the parties to that agreement, and saw them all sign it. The signatures thereto appended are the genuine handwriting of the parties thereto, respectively.

(Defendants' solicitor here waives the production of the subscribing witness to said contract.)

Interrogatory eighth. State, if you can, in whose handwriting is the body, and also the signature of the receipt attached to said contract or agreement.

Answer. Both are in the handwriting of George W. Lee.

Interrogatory ninth. Was any money, and if so, how much, furnished by the parties to said agreement under the same to said Lee, and in what proportions, and when?

Answer. Jonathan Cogswell furnished five thousand dollars, Lois Cogswell furnished three thousand dollars, I furnished two thousand dollars,
51 being the amount specified in the receipt at the foot of the contract, making ten thousand dollars in the whole, which was all paid to Mr. Lee at or about the time of the execution of the said contract, being the time of the date thereof.

Interrogatory tenth. Did said Lee under said agreement make any purchases? If so, where, and to what amount?

Answer. He did make purchases under that agreement in the State of Illinois, and to an amount a little exceeding ten thousand dollars—that is, the amount of his payments on account of those purchases a little exceeded that amount—ten thousand dollars; a part of the purchases were on credit, and for those he only paid a part of the purchase-money.

Interrogatory eleventh. What amount, if any, was advanced by Lee on account of these purchases, and when?

Answer. The payments exceed the ten thousand dollars about four hundred dollars; Mr. Lee advanced one half of that excess, say two hundred dollars, and the Cogswells and myself advanced the other half,
52 in the same proportion which we had contributed the ten thousand dollars.

Interrogatory twelfth. Did Lee at any time thereafter, and if so, when, make any proposition to the Cogswells, or to the Cogswells and yourself, relative to a settlement of the various matters and liabilities arising under said contract? And if so, and such proposition was in writing, produce the same.

Answer. He did make such a proposition, which is contained in two letters from him, one directed to myself, dated Kishwaukee, March 26, 1842, and the other directed to Lois Cogswell and J. Cogswell, dated March 20, 1842, which last letter was enclosed in the former letter, and directed to me at New York, and were received by me there, and which I now produce.

(Witness here produced letters marked Exhibit B and C, which are hereto annexed.)

Interrogatory thirteenth. Are said two letters in the handwriting of said George W. Lee, and is the signature to each of the same the genuine signature of said Lee?

53 Answer. The whole of both letters, including the signatures, are in Mr. Lee's own handwriting.

Interrogatory fourteenth. At the time you received these letters, what amount had been advanced by said Lee, under said contract, and what was the state of the accounts between you?

Answer. Mr. Lee had advanced only the two hundred dollars, before mentioned, that I am aware of. He had not paid any interest to the Cogswells or to myself for the ten thousand two hundred dollars which we had advanced. According to the terms of the contract, Mr. Lee was indebted to us for half the amount which we had advanced, and the interest on the same, at seven per cent., from the date of the contract.

Interrogatory fifteenth. State, if you can, what was the condition of Lee's affairs at this time.

Answer. Mr. Lee was very much embarrassed in his affairs. He had speculated largely in western lands in 1836 and 1837, and subsequently
54 he bought largely on credit, when the revulsion came in 1837–'8, and subsequently, down to the date of these letters, those lands had largely depreciated; they were principally unimproved lands, lots, and vacant lands, and Mr. Lee being called upon to pay those engagements, and other engagements which he had in New York, was unable to pay them. I

knew these facts from his communications to me personally and by letter, and from having been employed by him to negotiate settlements with several of his creditors in New York, and which were compromised by paying in western lands, or partly in those lands.

Interrogatory sixteenth. Where did the Cogswells reside at the time the proposition was made contained in said letters?

Answer. Jonathan Cogswell was a clergyman, and then resided at East Windsor, in the State of Connecticut, and his sister, Lois Cogswell, was staying with him, or at Mr. Dixon's, in Hartford, Connecticut.

Interrogatory seventeenth. About what time did you receive said letters, and what did you do, if anything, in reference to submitting the same to the Cogswells?

55 Answer. The mail was then very irregular between New York and Kishwaukee, the usual course being about three weeks; letters were frequently four or five weeks on the way; I think the mail was only about twice a week between Rockford and Chicago, and only once a week between Kishwaukee and Rockford. At this season of the year the roads and fords were in their worst state and the mails most irregular. I have no means of ascertaining the precise day when the letters were received. I waited for an opportunity to see the Cogswells before I submitted the proposition to them, as it seemed to require some explanation and a consultation between us. I saw Jonathan Cogswell, probably in May, as he was usually in New York during that month, but I cannot specify the time exactly. I showed the letters to him, and we consulted on the subject, and concluded to accept the proposition, and Mr. Cogswell said he would see his sister on the subject and see what she thought of it. My impression is that I saw Miss Cogswell myself during the latter part of May, or the early part of June, and talked the subject over with her. She said she was willing to do whatever her brother and myself thought best about it. They both authorized me to accept the proposition without insisting upon Mr. Lee's giving them the additional property which is mentioned in his letter, and called the
56 school section lots.

Interrogatory eighteenth. State fully what you did in reference to accepting said proposition, if anything, and when.

Answer. Soon after my interviews with the Cogswells, (I am not able to state the precise time,) I wrote, and forwardad by mail, a letter to Mr. Lee, informing him that the proposition contained in his letters, before referred to, had been accepted by the Cogswells and myself, and desired him to execute the deeds and papers necessary to carry it into effect.

Interrogatory nineteenth. State whether you have a copy of such letter, and if so, annex same to this deposition.

Answer. I am not certain that I kept a copy of that letter. My custom in regard to keeping copies of my letters was very irregular; I did not always, in fact I did not generally, keep copies. I have made search among my letters, and, not find any such copy.

57 Interrogatory twentieth. You have heretofore stated that you were directed by the Cogswells to accept Lee's proposition without insisting upon the school section lots: state what was the condition of the acceptance as to these lots.

Answer. I have no recollection of the particular terms of my letter; it must have been in conformity with the terms that the Cogswells and myself had agreed upon, that is, not to insist upon the school section lots.

Interrogatory twenty-first. After you advised Lee of the acceptance of his said proposition, did you hear from him again; and if so, about what time, and how?

Answer. We were in the habit of corresponding quite frequently together,

and I recollect in the course of that correspondence, between the date of my letter and his death, he mentioned that he had received the letter of acceptance.

Interrogatory twenty-second. Produce, if you can, the letter in which he mentioned that he had received your letter of acceptance; if not, explain why not.

58 Answer. I have made search among my papers for that letter and other letters that came from Mr. Lee about that period, and have not been able to find them. I went to Europe in 1851, and my letters were left in a box in the office of my former partner, Mr. Townsend, with other papers. On my return, in looking for papers in that box, I found several of my packages of letters loose and broken open, and the letters remaining mingled up with other papers in suits in which we had been attorneys. I gathered up the letters that I found loose and tied them in a bundle, but on several occasions when I looked for letters of that period, I have found that they were missing; and among those missing, the letters I received Mr. Lee of about that period are also missing. I can say, further, that I have lately searched over very thoroughly my letters and papers, and have not been able to find the letter to which I allude, or others of that period.

Interrogatory twenty-third. State the contents of said letter as nearly as you can.

Answer. I cannot pretend to state the whole contents of the letter, as it most probably embraced various matters about which we corresponded. I feel confident, however, that I had information from Mr.

59 Lee, contained in one of his letters, that he had received notice of our acceptance of his proposition. I have a strong recollection that he at the same time mentioned that he was taking some measures to carry it into effect, but what those measures were I do not recollect.

Interrogatory twenty-fourth. Were the papers perfected between Lee and the Cogswells and yourself for the purpose of carrying out said arrangement at that time; and if not, why not? State fully all you know about it.

Answer. During the summer and fall of 1842 the little village of Kishwaukee, where Mr. Lee resided, was subject to a very severe fever, of which a large part of the population died during the summer and fall. I think more than half the poeple died. There was great suffering for water. Mr. Lee and his family were sick, and Mr. Lee was greatly harassed and worried by those circumstances, and by his sickness was *was* probably hindered from attending to his business, and he died in the fall without having recovered his health. In fact, his death, as I have been informed, was brought about in some degree by his anxiety and care. It was my intention to go out to Kishwaukee during that summer or fall, and I

60 had so informed Mr. Lee during the spring of 1842. He had reason to expect me there at different times during the summer and fall, but I was prevented from going out during that year as I had intended, and did not go out until the spring of 1843. Soon after Mr. Lee's death, I was informed by Benjamin T. Lee, who was with him when he died, and for some time previous, that there were some deeds left by his brother, George W. Lee, for the Cogswells and myself, or for some of us. I replied to him, desiring him to have them recorded; one of them was recorded, being the deed I now produce. (Witness here produced the paper, exhibit or deed marked D, which is hereto annexed.) It was either sent by Lee to me and by me sent to the recorder's, or sent by Lee to the recorder and by the recorder to me. There was another deed, which I now produce, (witness here produced deed or paper exhibit marked E, which is annexed to this deposition,) which was handed to me by Benjamin T. Lee, at Chicago, n May or June, 1843, and which I had recorded. That is all I know of

any papers having been made by Mr. Lee with a view to carry out his proposition.

Interrogatory twenty-fifth. Explain what is meant, if you can, by the note referred to in Lee's letter, or what indebtedness is referred to by Mr. Lee in his letter of March 26, 1842; and state fully the nature and character of same.

61 Answer. Mr. Lee, being in embarrassed circumstances, had confessed a judgment in favor of Jonathan Cogswell, in Will county, Illinois, some time previous to the date of that letter, for, I think, about six or seven thousand dollars, with a view, as he informed me, of securing to the Cogswells and myself any indebtedness which might arise from him to us upon the settlement of the purchases which had been made under the contract of May 4, 1836, and had made his note or notes upon which the judgment was entered. Those are the note or notes he refers to in his letter. He also informed me that judgment was entered to secure any indebtedness which he might be under to myself, being then considerably indebted to me individually, besides the joint account.

Interrogatory twenty-sixth. Was there any other indebtness from Lee to the Cogswells and yourself on joint account except said judgment, and at whose instigation was same confessed?

Answer. It was a voluntary judgment on the part of Mr. Lee, entered at his instigation. I cannot say whether this judgment would have covered the entire indebtedness from Lee to us on joint account or not. The only indebtedness from Lee to us on joint account was the indebtedness due on that contract.

62 Interrogatory twenty-seventh Explain fully the relations which existed between Lee and yourself during the period of time covered by these transactions and up to the time of his death.

Answer. Mr. Lee and myself became intimate friends in 1827 We continued to have most intimate and friendly relations until his death; I was his counsel, legal adviser in all his business that was to be transacted where I could attend to it, and I transacted a great deal of business for him; we occupied rooms together in N. Y. for several years before I was married; he was one of my groomsmen at my marriage; he advised with me as a friend in regard to his business; we had various joint speculations together in landed property before he went to Illinois in 1836; I had great confidence in his honor and integrity, and believed he had the same in mine; at any rate, he frequently so professed to me; and during the latter part of his life, after he became embarrassed, I aided him by advancing him money and settling his debts and liabilities; in fact, he was my most intimate friend until his death.

Interrogatory twenty-eighth. What became of your interest in said lot 4, in block 53, original town of Chicago, under said arrangement or otherwise?

63 Answer. I sold it to Jonathan Cogswell about 1844.

Interrogatory twenty-ninth. Have you any release or discharge from Jonathan Cogswell or Lois Cogswell, or both, relative to said transactions? If so, produce the same.

Answer. I have a release from each of them. Witness here produced releases or papers, marked Exhibit F and Exhibit G, which are hereto annexed.

Interrogatory thirtieth. Was you, at and about the time said proposition was made and accepted, paying attention to the value of Chicago lots and western lands? And if so, what in, your opinion, was the value, at the time of said acceptance, of said lots agreed or offered to be taken in satisfaction of Lee's said indebtedness?

Answer. I was paying attention to the value of property of the description mentioned in Mr. Lee's proposition; at that period property of that description was very much depressed in value. I made an estimate of it at about that time, and came to the conclusion that the property pur-
64 chased by Mr. Lee on joint account would not sell for enough, and was not worth enough, to pay the original cost and interest, and that if a sale was made there would be a large deficiency. My opinion then was, from the best information I could get, that the whole property could not be sold for cash for over five or six thousand dollars, and that that was its value at that time. The west fract. half of sec. 19, mentioned in Mr. Lee's proposition, was worth from two to three hundred dollars. It was very difficult then to sell any of the property at any price, and that depression of price continued during all of 1842 and 1843.

Interrogatory thirty-first. When, after the making and acceptance of said proposition, did you first meet Benjamin T. Lee, and where and in what capacity was he acting; how came you to meet him at that time, and what, if anything, was done relative to said proposition and acceptance? State fully.

Answer. I first met him after that in the latter part of May or fore part of June, 1843. He had been appointed administrator of George W. Lee, or was acting in that capacity. We had had some correspondence together, and it had been arranged that we should meet at Chicago for the
65 purpose of settling and arranging the matters between Mr. Lee's estate and the Cogswells and myself. Mr. Benjamin T. Lee seemed fully to understand the arrangement which had been made for a settlement of the matter between Mr. George W. Lee and the Cogswells and myself according to the proposition and acceptance before mentioned. He then handed me the deed before mentioned, marked Exhibit E, and having before sent to me the deed marked Exhibit D, we considered those sufficient to pass the title, so far as it related to the premises described in those two deeds. I understood Mr. Lee to say that they were left with him by his brother, George W. Lee, to be handed over to the Cogswells or myself, with a view of carrying out Mr. George W. Lee's proposition. The question then arose as to the best mode of vesting the title to the other lands mentioned in the proposition, and which had not already been conveyed to us. Some of them had been previously conveyed to some of us; that is, the title to all of the property purchased by Lee on joint account at the date of said proposition was in Jonathan Cogswell or Lois Cogswell, except the canal lands mentioned in the deeds marked Exhibit D and E, and the west fractional half of section 19, referred to in his proposition. It was arranged between Benjamin T. Lee and myself that an execution should be issued upon the judgment recovered in Will county, and the said west fractional half of
66 section 19 (in Lasalle county) should be levied upon and sold under the same for the benefit of the Cogswells and myself, for the purpose of carrying out said proposition, which was done; the property was sold, and was bid in and conveyed to one of the Cogswell or myself, to whom I don't know. It was also arranged between Benjamin T. Lee and myself that an execution should issue to Winnebago county and be levied on certain lands there, which were agreed upon between Mr. Benjamin T. Lee and myself, in compromise and satisfaction of my individual claims against George W. Lee, which were then adjusted by Mr. B. T. Lee, as administrator, and myself; and that, after making the sales under these executions as above agreed upon, the said judgment thereafter should not be enforced against the estate of George W. Lee, except for the purpose of protecting the title to the lands which the Cogswells or myself had derived from or through George W. Lee.

Interrogatory thirty-second. Had Benjamin T. Lee, to the best of your recollection, at the time you met him in Chicago, any letters, papers, or memoranda, other than said deeds of his brother, George W. Lee, indicating said George W. Lee's intention to convey said lands mentioned in his, said George W. Lee's, letters, or any part of the same, to the Cogswells, or either of them, or to them and yourself? If so, what were they, where are they, if you know? And if you can, produce them.

67 Answer. Mr. B. T. Lee had various papers with him on that occasion belonging to the estate of George W. Lee. He spoke of Mr. Lee's proposition as though he understood it fully. I don't remember that he shewed any papers of the description in regard to which inquiries are made in the interrogatory.

Interrogatory thirty-third. Do you know Laura S. Lee, widow of *of* George W. Lee; and if so, where has she resided since his decease; and has she ever, to your knowledge, since that time, asserted any claim to or interest in said lands embraced in said letters of George W. Lee? If so, state when and where.

Answer. Mrs. Lee was, I think, at Chicago at the time the settlement between Benjamin T. Lee and myself took place, and approved of the settlement either at that time or soon afterwards. She came to New York soon after, and has since resided there, or in that neighborhood. She has never, to my knowledge, made any claim or asserted any interest in same.

Interrogatory thirty-fourth. What steps, if any, were taken beyond

68 those you have mentioned to collect from the estate of George W. Lee the apparent indebtedness of said Lee to the Cogswells, or either of them?

Answer. Nothing whatever.

Interrogatory thirty fifth. Have you at any time, since said arrangement with Benjamin T. Lee, had any letter from him relative to said Chicago lots, or either of the same? If so, produce the same to be annexed to this deposition.

Answer. I have received such letter. Witness here produces letter marked Exhibit H, which is hereto annexed.

Interrogatory thirty-sixth. From and after the said time you was in Chicago who paid taxes on said lots described in said letter of George W. Lee?

Answer. They were paid by the Cogswells and myself until we sold.

69 Interrogatory thirty-seventh. Do you know of any other matter or thing of benefit or advantage to the complainants in this cause? If yea, state the same.

Answer. I do not.

Cross-examined.

First cross-interrogatory. Can you give the amount and items of George W. Lee's indebtedness to yourself individually, as agreed upon by yourself and B. T. Lee?

Answer. I cannot at present; I do not recollect them.

Second cross-interrogatory. Please state the amount, as near as you can recollect.

Answer. I don't remember. I think I can state it by looking up my papers.

Cross-interrogatory third. Was the arrangement between yourself and Benjamin T. Lee, as administrator of George W. Lee, to which you

70 alluded, in writing? If so, produce the same.

Answer. There were two agreements in writing between us, which I now here produce. (Witness here produced papers or contracts marked

Exhibit I and Exhibit J, which are hereto annexed.) Those are the only agreements which were made in writing between us.

Cross-interrogatory fourth. Do the writings, marked Exhibits I and J, embrace the agreement between yourself and Benjamin T. Lee to which you have alluded?

Answer. I see, by reference to these agreements, that they are dated August 18, 1843, which brings to my recollection that they were not executed at Chicago, as I had first supposed, but were executed at New York subsequently, at or about the day of their date. The agreements made at Chicago were more particularly in reference to arranging the manner of vesting the title in the Cogswells and myself of the lands which Mr. Lee (Geo. W.) in his proposition had proposed to give us; and I now think that we did not come to a full settlement and *and* examination of my individual account until Mr. B. T. Lee and myself afterwards met in New York,
71 and those papers were drawn as embracing the substance of what had been agreed upon in the individual and joint matters.

Cross-interrogatory fifth. Did you receive the piano, in accordance with the agreement marked Exhibit I?

Answer. It was a part of the understanding between Mr. B. T. Lee and myself, or rather I proposed that the piano should go to Mrs. Lee, the widow of George W. Lee, and it was sent down to New York for her. It was so sent, and she received it, as she informed me, by my permission.

Cross-interrogatory sixth. You say that B. T. Lee informed you, after his brother George's decease, that he had left some deeds for the Cogswells or yourself. Was this information by parol or by letter? If by letter, produce the same.

Answer. It must have been by letter. I don't know that I kept the letter. I have looked over my papers recently and don't find it. I don't think I have it.

Cross-interrogatory seventh. Did you ever reside in Illinois?

72 Answer. I never resided in Illinois.

Cross-interrogatory eighth. You have said that George W. Lee informed you of the confession of the judgment in Will county, and for what object. Please state whether such information was by letter or parol. If by letter, produce it.

Answer. It was by parol. It may have been also mentioned in a letter, but I have no recollection of it.

Cross-interrogatory ninth. Where did he tell you of it, and when?

Answer. I saw Mr. Lee in Illinois. I think it was in 1840 or in 1841; and I saw him in New York in those years, or subsequently, when he mentioned it to me.

Cross-interrogatory tenth. Have you any other letters from George W. Lee relative to the transactions between the Cogswells, yourself, and himself, than those which you have produced, written during the year 1842? If so, please produce them.

Answer. I have not been able to find any others, though I have
73 looked.

Cross-interrogatory eleventh. Did you ever see the letter which you say you wrote to George W. Lee, advising him of the acceptance of what you call his proposition of the 26th March, A. D. 1842, after you mailed the same?

Answer. Not to my knowledge.

Cross-interrogatory twelfth. In that letter did you not write to him that you would soon go to Illinois, and when there would make a satisfactory arrangement with him?

Answer. I do not recollect the precise terms of my letter to him on that

subject, but I have a strong recollection that the substance of it was accepting his proposition. I think it likely that I may have mentioned that I intended to go to Illinois, as it was my intention to do so.

Cross-interrogatory thirteenth. Can you give the substance of the language used by yourself in that letter? If so, repeat it.

74 Answer. I cannot, further than I have already done.

Cross-interrogatory fourteenth. Had George W. Lee purchased property in Illinois on his own account prior to his purchasing on the joint account of the Cogswells, yourself, and himself?

Answer. Not to my knowledge. He may have done so, but not as I recollect.

Cross-interrogatory fifteenth. Was the property in Winnebago county, which was sold upon the judgment, purchased by him on joint account or not?

Answer. It was not purchased on joint account.

Cross-interrogatory sixteenth. Who wrote the name of Louis Cogswell in the deed which you have produced of lot four, (4,) in block fifty-three, (53;) and when was it written, and where?

Answer. I think it was written by Benjamin T. Lee, at the time of our meeting in Chicago.

75 Cross-interrogatory seventeenth. Was there any other indebtedness or unsettled business relations existing at the time of George W. Lee's death between himself and the Cogswells and yourself, or either of you, to your knowledge, than those already mentioned in deposition and exhibits?

Answer. Not that I am aware of. The settlement I made with Benjamin T. Lee was intended to cover the unsettled accounts between myself and George W. Lee, and the Kishwaukee lands and the piano were to be received by me in satisfaction of my private claims against said George W. Lee.

Cross-interrogatory eighteenth. When you went west, in the year 1843, where did you *did you* first see B. T. Lee? State particularly. And where did you next see him?

Answer. I first saw him in Chicago. I do not recollect the house. I think I saw him there several times. I think I saw him once at the hotel where he stopped. I don't recollect the name.

Cross-interrogatory nineteenth. Do you recollect where you was when you first saw the deed of lot 4, block 53?

76 Answer. I do not recollect with any certainty; my impression is it was either at the hotel where he staid or the hotel where I staid.

Cross-interrogatory twentieth. Did you not at first, in your interviews with Benjamin T. Lee, insist upon having the school section property also?

Answer. I do not think I did.

Cross-interrogatory twenty-first. Are you positive about that?

Answer. I think there was some discussion between Benjamin T. Lee as to what property I should have in satisfaction of my individual claims. It may have been mentioned in connexion with that part of the transaction. But we finally agreed that the Kiswaukee lands only should be sold for my benefit.

Cross-interrogatory twenty-second. Have you been furnished by the complainants in this cause, or their attorneys, with a copy of the bill in this suit, the testimony of Benjamin T. Lee in regard to the case, or other

77 papers in reference to it? If so, how long since?

Answer. The counsel for the complainants showed me a copy of the bill in this suit yesterday, which I have read in part, not wholly. He also showed me at same time a paper purporting to be a copy of Benjamin T. Lee's testimony, or rather his minutes of said Lee's testimony, on the trial of an action at law relating to the same property.

Direct resumed.

Question. What statement, if any, did Benjamin T. Lee make in reference to same at the time he inserted said name of Lois Cogswell in said deed?

Answer. He stated that he was authorized by his brother to insert either of our names, that is, the name of one of Cogswells or myself, as we might direct, for the purpose of carrying out his said brother George W. Lee's proposition.

Second. State, if you can, how said two letters of George W. Lee,
78 containing said proposition, came to be preserved at the time your letters were disarranged and lost, as you have stated.

Answer. Those two letters were placed in a bundle connected with the title papers of said property which was kept in my safe; I mean the title papers respecting the joint property.

Cross resumed.

Question. In whose name was the title taken of the property purchased in joint account other than the property described in this deposition?

Answer. I think the title of all the joint property was taken at first in the name of George W. Lee, and he afterwards conveyed to Lois Cogswell. It may be that a portion was conveyed to Jonathan Cogswell.

F. S. KINNEY.

Sworn to and subscribed before me this thirtieth day of August, one thousand eight hundred and fifty-nine.

[SEAL.] N. C. KINNEY,
Notary Public.

79 EXHIBIT A.

Memorandum.—George W. Lee being about to visit and examine certain parts of the western country for the purpose of making investments in real estate, it is agreed between him and Jonathan Cogswell, Lois Cogswell, and Franklin S. Kinney, that said Lee may make such investments for their joint account on the following terms and conditions, that is to say:

The sum of ten thousand dollars shall be furnished as follows, viz: by J. Cogswell five thousand dollars, by Lois Cogswell three thousand dollars, and by Franklin S. Kinney two thousand dollars.

Purchases may be made for cash or on credit, or both, to an amount not exceeding in the whole forty thousand dollars; and the said Lee shall pay one-half of such credits when they fall due, and the said Cogswells and Kinney the other half in the like proportions as the sum above mentioned is advanced by them respectively. And the said Lee shall, within three years, repay to said Cogswells and Kinney one-half the said sum so furnished by them, and shall also pay them annual interest thereon at seven per cent.

The profit and loss of the operation shall be shared and sustained as follows, viz: one-half by the said Lee and one-half by the said Cogswells and Kinney, in the proportions, as between the latter, in which the said first-mentioned sum is advanced by them respectively.

80 The titles and contracts may be taken by said Lee in his own name in the first instance, but he shall afterwards convey and assign the undivided half of the purchases he may make under this contract to the said Cogswells and Kinney in such manner as they may desire.

The said Lee shall give his personal attention to the purchase, management and sale of the property, without charge for his services or personal

expenses, and shall not during his contemplated route make any purchases of real estate, directly or indirectly, except for the benefit of the parties hereto, pursuant to the terms hereof; and he shall from time to time keep the said Kinney advised by letter of his purchases and proceedings in detail.

In case the said Lee should find it convenient to furnish funds of his own, he shall be at liberty to do so, and for the amount so furnished he shall be entitled to interest, and shall share and sustain the profit and loss in the proportion which the funds he may advance shall bear to the said sum of ten thousand dollars.

The said Lee shall have the full right to sell the whole or parts of the premises purchased until otherwise directed by the said Cogswells and Kinney. Dated May 4th, 1836.

GEORGE W. LEE.
JONATHAN COGSWELL.
LOIS COGSWELL.
F. S. KINNEY.

In presence of—
STEPHEN MERRIHEW.

The word "sum" written over an obliteration on first page, and the word "shall" interlined on this.

81 Rec'd, N. York, 7 M'y, 1836, from F. S. Kinney, two thousand dollars on the within contract for his part.

GEORGE W. LEE.

82 EXHIBIT B.

KISHAWAUKEE, *M'ch* 26, 1842.

FR'ND KINNEY: I enclose a letter upon the subject of the canal lots, and you will see how it stands; but how to arrange it without our being together I know not. As I am not able to own the property, and really, in the depressed feeling I am in, am not fit to take care or look after it, I would like them to take all, and give up my note, I paying property enough to make them secure. For instance, the property to be all theirs, which is at ⅓ less than the cost now.

It will include $2,172 00 of my own property. I will give, besides the west fractional ½ of sec. 19, which ought to go with the east ½, now owned by the company, $400 00. I will also (if they actually ask; it ought not to be required) give all my school section lots in Chicago, which cost 26 or 2,700 dollars, and certainly is worth $1,500 cash now. I feel so much depressed and so unfit to take care of these matters that I will, if the whole matter can be settled, give up this property, and have it off of mind, if the whole is asked. I rec'd your letter upon the subject of these canal lots, and from its tone should fear that you had or Mr. C. had thought hard of my not arranging the matter before. The truth is, I did not know how to do it, and waited for Winter to take the subject up; and then I have had so much trouble that I have neglected all my own business.

83 If no arrangement can be made for their taking the property, you and I could fix it when you come out, which you write will be in May. I suppose this letter of M'ch 20 to Miss Cogswell and her brother, with statement, &c., about the lots, is full and complete evidence of their interest in the property, as per our writing, and they can have no feeling of uneasiness upon the subject. My object was to have gone to Chicago and looked at the property, and seen if there was a way that the loss could be divided fairly, and to have deeded accordingly, and obtained the approval of

you all afterwards. But circumstances have occurred to keep me here. Now my wish is to close and settle the business with them on liberal terms, as I shall never be able now to pay the note or look after the property.

In haste, yours,

G. W. LEE.

In the De Bellier affair, perhaps it would effect a settlem'nt if they thought I was taking the benefit of the bankrupt act.

84 EXHIBIT C.

KISHWAUKEE, *March 20th*, 1842.

I herewith send to you a statement of the canal lots which were consolidated by me under the act of the legislature of this State.

The lots purchased for you, F. S. Kinney, and myself, on joint account, as per our articles of agreement, were as follows:

Lots 1, 2, and 3, in block 45.

" 8, 9, and 10, in block 26.

Below is a statement, as the whole would stand at the time I undertook to settle with the State, including lot 4, in block 53, which I owned on my own individual account:

No. lot.	No. block.	Original sales.	Present reduced price.	Payments made.	Balance due.
4	53	$5,040 00	$3,360 00	$1,775 12	$1,584 88
8	26	1,130 00	753 33	397 67	355 66
9	26	1,930 00	1,286 67	678 73	607 94
10	26	1,510 00	1,006 67	531 46	475 21
1	45	5,130 00	3,420 00	1,805 55	1,614 45
2	45	4,020 00	2,680 00	1,414 88	1,265 12
3	45	2,470 00	1,646 67	869 34	777 33

The following are the lots selected, for which I have obtained patents:

Lot No. 4, in block 53	$3,360 00
Lot No. 1, in block 45	3,420 00
The east half and the east half of the west half of lot No. 2, in block 45	1,999 00
	8,779 00

85 These lots were taken at ½d less than their original value. It will be perceived that lot No. 4, in block 53, is taken; it was for the reason that, as things are, it was the best purchase, on account of its location; and I shall own, individually, in that the amount previously paid by me for it, besides my joint interest as a partner with you in the balance.

Statement of the private amount paid on lot 4, block 53, by G. W. Lee.

Lot 4, block 53, ¼ in advance at the sale	$1, 260 00
Bonus to the settler at the sale	460 00
Interest in advance on instalments	226 00
Interest in 1837	226 00
	2, 172 00

In the consolidation of these lots it was a difficult matter to arrange the amount, as no change could be paid to us, and no subdivision of lots suffered less than ¼th, and I had to pay 100 dollars in Illinois canal scrip; and by the division, as it stands, it is thought that I obtained a great advantage. The scrip is low, and therefore I paid it, otherwise I should have been obliged to have lost over 600 dollars, and that sells for 20 dollars, or thereabouts.

I have not yet been to Chicago since I received the patents, which was not long since, and they are not yet recorded.

The property which we now have *is clear and paid for*, and it is the best of the *of the* purchase, as I took the most unwearied pains to inform myself before I went to Lockport; and I spent three days, working hard, before I could get what I have without paying about 530 dollars beyond what
86 I have paid.

By this statement you will see that there is an amount of 2,172 dollars of my individual property consolidated with the company property.

How shall we arrange this matter? I suppose that it is not easy to do so, without the parties are together.

As I am illy able to hold any part of the property, either of this or our lands and other lots, I would like to have some arrangement made, if possible, by giving you the balance which appears in my favor on these lots, and other property, of which I will address you upon, in a few days, so as to cancel the debt which I owe in the shape of a note, and which I fear I never can pay, as it now stands, in money, though I feel willing to give you a more than cash equivalent for the amount. I am so far removed from all our property that it is easier and cheaper to have an agent to attend to it than for me, as a letter will do all which I could if at the spot; and the expenses of travelling is great.

I believe, myself, that the Chicago property will pay the whole investment, with interest, in less than five years, and that the balance will be clear; but this may be an over sanguine opinion. However, I think that it would be best for one person to control the whole; and as I live entirely away, I will address you in a few days and make a proposition, in connexion with this business, which, I have no doubt, will be so liberal that the parties who are interested will feel it for their interest to accept and
87 take the control of the whole.

I feel grateful for the confidence and kindness which all parties have reposed in me in this business, and am not without the feelings of deep regret that the speculation could not be closed to advantage and profit at an earlier day than it can.

The principal amount (the canal lots) has terminated far better than I had feared at one time, and better than we could have hoped after the crash of '36 and '37.

It is no small matter for us to get the property at ⅓d less than the cost, and to take up all the notes and be allowed all we have paid, besides the selection of the choicest part of the property.

I am ready to arrange this matter any way that will be agreeable and right, only it will be perceived that there is an individual and partnership interest in the best lot, which cannot be arranged through a deed very well. I will very soon write a proposition, and let you consult each other upon the subject.

I have been so unfortunate in every way that I hardly know what course to pursue to obtain a living; and I feel that my ability to pay the note against me and to assume my portion of the property will never arrive.

Very truly, your obedient servant,

GEORGE W. LEE.

Miss LOIS COGSWELL and Rev. J. COGSWELL.

P. S.—I have lately heard that the county seat has been estab-
88 lished of Henry county, at Morristown. I have written to ascertain if it is true. If it is, that investment will be good, and salable. I shall hear before long, and will write as soon as I do.

Y'rs, G. W. L.

EXHIBIT D.

This indenture, entered into this fifth day of July, A. D. 1842, by and between George W. Lee and Laura S., his wife, of Kishwaukee, Illinois, parties of the first part, and Lois Cogswell, of New York, party of the second part, witnesseth: That for and in consideration of the sum of five thousand four hundred and nineteen dollars, paid by the said Lois Cogswell unto the said parties of the first part, the receipt whereof is hereby acknowledged, we, George W. Lee and Laura S., hereby grant, bargain, sell, and convey unto the said Cogswell, her heirs and assigns forever, all those certain lots, pieces, or parcels of land, known and described as follows, to wit:

Lot No. 1, in block number forty-five, the east half and the east half of the west half of lot No. two, (2,) in block No. forty-five, all lying in the original town of Chicago, and described in the patents recorded in Cook county, pages 205 and 206, book 7, April 23, 1842.

To have and to hold the above granted and bargained premises, with the appurtenances thereunto belonging, unto the said Lois Cogswell,
89 her heirs, and assigns forever. And we do, for ourselves, our heirs, executors, and assigns, covenant with the said Cogswell that until the ensealing of these presents we were well seized of the aforesaid premises in fee simple, and that the same are free from all incumbrance of the said parties of the first part, and that they will forever warrant and defend the aforesaid premises unto the said Cogswell, her heirs, and assigns forever.

In witness whereof, we have hereunto set our hands and seals, at Kishwaukee, the day and year first above written.

GEORGE W. LEE. [SEAL.]
LAURA S. LEE. [SEAL.]

Witness.

STATE OF ILLINOIS, *Winnebago county, ss:*

I, Duncan Ferguson, a justice of the peace for the county aforesaid, do certify that George W. Lee and Laura, his wife, whose signatures appear to the foregoing deed, and who are personally known to me to be the persons described in and who executed the same, did severally acknowledge that they had executed the said conveyance, for the uses and purposes therein mentioned. And the said Laura Lee, having by me been made acquainted with the contents of said deed, and examined separate and apart

from her said husband, acknowledged that she executed the same and relinquished her dower to the premises therein conveyed voluntarily, freely, and without compulsion of her said husband.

Given under my hand and seal this 12th day of July, A. D. 1842.

DUN. FERGUSON, [L. S.]
Justice of the Peace.

90 STATE OF ILLINOIS, *Winnebago county, ss:*

I, Selden M. Church, clerk of the county commissioners' court of said county, do certify that Duncan Ferguson, whose signature appears to the foregoing certificate of proof or acknowledgment, was, at the time the same bears date, an acting justice of the peace in and for said county, duly commissioned and sworn, and that, as such, full faith and credit are due, and should be given, to all his official acts; and further, that I am well acquainted with the handwriting of such justice, and do believe the signature thereto attached to be genuine.

Given under my hand and the seal of said court, at Rockford, this 15th day of February, A. D. 1843.

SELDEN M. CHURCH,
Clerk Co. Com's' Court, Winnebago County.

STATE OF ILLINOIS, *Cook county, ss:*

On the 20th day of February, 1843, foregoing deed was left for record and duly recorded in book No. 8, of deeds, page 520.

ELI B. WILLIAMS, *Recorder.*

91 EXHIBIT E.

This indenture, entered into this fifth day of July, A. D. 1842, by and between George W. Lee and Laura S., his wife, parties of the first part, of Kishwaukee and State of Illinois, and Lois Cogswell, of New York, of the second part, witnesseth: That for and in consideration of the sum of thirty-three hundred and sixty dollars paid to the said parties of the first part by Lois Cogswell, the receipt whereof is hereby acknowledged, we, George W. Lee and Laura S., hereby grant, bargain, sell, and convey unto the said party of the second part, his heirs, and assigns forever, all that certain lot, piece, or parcel of land, known as lot No. four, in block No. fifty-three, in the original town of Chicago, Illinois, to have and to hold the same free from all claims or incumbrances of the said parties of the first part.

And the said George W. and Laura S., for themselves, their heirs, administrators, and assigns, doth covenant with the said Lois Cogswell that at and until the ensealing of these presents they were well seized of the aforesaid lot in fee simple, and hath good right to bargain and sell the same in manner and form aforesaid, and that the same is free from all incumbrances whatsoever.

And the said parties of the first part doth covenant that they will forever warrant and defend the party of the second part in the quiet and peaceable possession of the within bargained premises against all and every person claiming, or to claim, all or any part of the same.

92 In witness whereof, we have hereto set our hands and seals, at Kishwaukee, the year and day first above written.

GEORGE W. LEE. [SEAL.]
LAURA S. LEE. [SEAL.]

Witness.

STATE OF ILLINOIS, *Winnebago county, ss:*

I, Duncan Ferguson, a justice of the peace of said county, do certify that George W. Lee and Laura, his wife, whose signatures appear to the foregoing deed, and who are personally known to me to be the persons described in and who executed the same, did severally acknowledge that they had executed the said conveyance, for the uses and purposes therein mentioned. And the said Laura Lee, having by me been made acquainted with the contents of said deed, and examined separate and apart from her said husband, acknowledged that she executed the same and relinquished her dower to the premises therein conveyed voluntarily, freely, and without compulsion of her said husband.

Given under my hand and seal this 12th day of July, 1842.

DUN. FERGUSON, [L. S.]
Justice of the Peace.

STATE OF ILLINOIS, *Winnebago county:*

I, Selden M. Church, clerk of the county commissioners' court of said county, do certify Duncan Ferguson, whose signature appears to the certificate of acknowledgment accompanying the annexed deed, was, at
93 the time the said certificate bears date, an acting justice of the peace in and for said county, duly commissioned and sworn, and, as such, full faith and credit are due, and should be given, to all his official acts; and further, that I am well acquainted with the handwriting of such justice, and do believe the signature thereunto attached to be genuine.

Given under my hand and the seal of said court, at Rockford, this 10th day of June, A. D. 1843.
[L. S.]

SELDEN M. CHURCH,
Clk Co. Com's' Court, Winnebago County.

STATE OF ILLINOIS, *Cook county:*

On this 23 day of June, A. D. 1843, the within deed was left for record and duly recorded in b. No. 9, of deeds, page 245.

ELI B. WILLIAMS, *Recorder.*

94 EXHIBIT F.

In consideration of one dollar to me in hand paid by Franklin S. Kinney, I do hereby release and discharge him from all claim and liability which I now have, or may hereafter have, against him by reason of a contract dated May 4th, 1836, between George W. Lee, Lois Cogswell, said Franklin S. Kinney and myself.

Witness my hand and seal the 29th day of August, 1859.

J. COGSWELL. [L. S.]

Witness:
N. K. COGSWELL.

EXHIBIT G.

In consideration of one dollar to me in hand paid by Franklin S. Kinney, I do hereby release and discharge him from all claim and liability which I now have, or may hereafter have, against him by reason of a contract dated May 4th, 1836, between George W. Lee, Jonathan Cogswell, the said Franklin S. Kinney and myself.

Witness my hand and seal this the 29th day of August, 1859.

LOIS COGSWELL. [L. S.]

Witness:
JAMES DIXON.

95 EXHIBIT H.

CHICAGO, ILL., 10*th Nov.*, '43.

F. S. KINNEY—SIR: I rec'd your answer to my letter at Rockford. As the going is very bad, indeed, I did not think it safe to bring it to Chicago on a lumber wagon, and I engaged Mr. V. A. Marsh to bring it in on springs. I expected him soon to follow me, but he was taken sick, which detained him a week, and it did not arrive here until the 7th, and I immediately shipped it on the steamboat Great Western, (contrary to the advice of some,) but I thought I would venture to send it. I have put it in charge of a friend who will promote its passage as much as possible. I have also written to Messrs. Kinney, Davis & Co. to forward it immediately to you, and to write you. It is marked F. S. Kinney, New York. I regret that it could not have been shipped sooner. I suppose you will have no objection to send me a receipt discharging me from the obligation to send it at an earlier date. I have sold my farm for 2,000 dollars, and have my family here pleasantly situated. If you wish to lease for 21 years the lot west of the hotel, or lot 4, in 53, you will please write me the terms; or if you would like to sell 40 feet front on either lot, 300 doll's cash and the remainder in yearly pay'ts for 5 years, you will please state terms.

Kishwaukee is a dead and disgusting place; I was there only twice; Emmerson came near dying with the ague, and the rest were not much
96 better; it has been quite as sickly as it was last year.

You ask me to send a deed of the prairie named in our agreement; there is no deed of it among my brother's papers.

I have had considerable trouble with old Capt. Midford. He has obtained a judgment against the estate, while I was gone, of $450; there was no defence, as I was the main witness, and I not get back until after the appeal limits; my lawyer could not obtain a continuance. I have commenced a suit against him on ac., and I hope to obtain a judgment to balance his. If he preserves his claim, it will make a material difference in the result of the estate.

I only paid the freight on the piano to Buffalo; it is so late I could not get them to contract any farther. Mr. Holbrook, I presume, will pay the fare from Buffalo.

Yours, &c.,

B. T. LEE.

EXHIBIT I.

Articles of agreement made the eighteenth day of August, 1843, between Franklin S. Kinney, of Castleton, Richmond county, in the State of New York, counsellor-at-law, party of the first part, and Benjamin T. Lee, of Winnebago county, in the State of Illinois, administrator of the estate of George W. Lee, late of Kishwaukee, in said county of Winnebago,
97 deceased, party of the second part: Whereas the said George W. and Franklin S., during the lifetime of the former, had various business transactions with each other, and it appearing from the books of account in the possession of the said George, at his death, that he was indebted to said Franklin S., for goods and property, in the sum of sixteen hundred ninety-four $\frac{90}{100}$ dollars, or thereabouts, and the said George W. being also further indebted to the said Franklin S. for services, as well in his profession as otherwise, and the said Franklin S. being also indebted to the said George W., for various services, in selling goods, collecting debts, attending to his business generally, in Illinois, and also for money and property which the said Franklin S. has from time to time collected for, or received of, or for

said George W. Lee; and whereas, after a full and deliberate examination of the accounts between the parties, and taking into consideration all the circumstances attending the various transactions and business between the said George W. and Franklin S., it has been determined and mutally agreed between the parties hereto, that there is now justly due and owing from the estate of the said George W. to the said Franklin S. a balance of three hundred dollars, for which balance the said Franklin S. has agreed to accept and receive the piano-forte which the said George W. owned and had at his residence at his decease, the same to be delivered to said Franklin S., in New York, during the ensuing month, in good order and without expense to him:

Now, therefore, these articles witness that the said party of the
98 first part, in consideration of the premises, and of one dollar to him paid by the party of the second part, the receipt whereof is hereby acknowledged, hath remised, released, and discharged the said party of the second part, and the estate of the said George W., from all debts, dues, claims, demands, actions, causes of action, judgments and decrees, which the said party of the first part now has or claims, or ever has had or claimed, against the said George W. or his estate, saving and excepting all claims the said party of the first part has or may have upon covenants in deeds for the conveyance of lands or tenements, and all claims which he has jointly with Jonathan and Lois Cogswell against the estate of the said George W. And the said party of the second part, in consideration of the premises, and of one dollar to him paid by the said party of the first part, the receipt whereof is hereby acknowledged, hath remised, released, and discharged, and by these presents doth remise, release, and discharge, the said party of the first part, from all debts, dues, claims, demands, actions, causes of action, judgments, and decrees, which the said party of the first part now has or claims, or ever has had or claimed, or which the said George W. Lee, in his lifetime, ever had or claimed against the said party of the first part. And the said party of the second part agrees to deliver the said piano-forte to said Franklin S. in the manner before mentioned.

In witness whereof, the said parties have hereto set their hands and
99 seals the day and year first above written.

F. S. KINNEY. [L. S.]
B. T. LEE, [L. S.]
Administrator on Estate of Geo. W. Lee.

Sealed and delivered in the presence of—
A. R. DYETT.

The words agrees to, also second, obliterated before execution.

EXHIBIT J.

Memorandum.—For the purpose of liquidating and settling the claims of Jonathan and Lois Cogswell and Franklin S. Kinney, against the estate of the late George W. Lee, arising under the contract between them, dated 4th May, 1836, it is agreed as follows:

1st. Said Cogswells and Kinney are to hold all the lands conveyed to them, or either of them, under said contract, as for their own, freed from all claims on the part of the heirs or representatives of said Lee.

2nd. Benjamin T. Lee, administrator of George W. Lee, agrees that the following lands shall be conveyed to said Cogswells and Kinney, or such person as they may designate, so as to vest in them, or such person, a good and unincumbered title, viz:

West fractional $\frac{1}{2}$ ($264\frac{1}{2}$) acres, sec. 19, T. 32 N., R. 4 east, Lasalle co., Illinois.

100 East ½ of SE. frac. ¼ sec. 20, T. 43 N., R. 1 east.
E. ½ of NE. " ¼ sec. 29, do " "
E. ½ of SE. " ¼ sec. 29, do " "
NE. ¼ " sec. 32, do " "
W. ½ " NW. " ¼ sec. 33, do " "
} At Kishwaukee, Winnebago co., Illinois.

Also, a parcel of land at Kishwaukee, described as follows: Beginning on the east line of said section 29 six yards south of section 20; running thence north to Rock river; thence to the middle of Kishwaukee creek, south of the island therein, to a point opposite the centre of Bridge street, as laid down on the map or plot of the town or village of Kishwaukee, recorded by G. W. Lee; thence along the centre of that street to the centre of Lee's avenue; thence southerly along the centre of said avenue to sec. 28; thence south six rods; and thence west to the place of beginning. Also, all the right and title which said Lee had at his death to an island in Rock river, called Beaver's island, lying opposite said premises, and to the lands under water in that river, lying adjacent to said premises, excepting and reserving in block 8, lot 7; in block 25, lot 11; and such other town lots as said Lee may have sold or contracted to sell.

3rd. In order the effectually to vest the title of said lands in the said Cogswells and Kinney, the same may be sold under executions to be issued upon a certain judgment recorded by Jonathan Cogswell against George W. Lee in Will county circuit court, in 1840, for five thousand
101 six hundred and fifty-one dollars and thirty-two cents, or thereabouts.

4th. The said Cogswells and Kinney agree that the above agreement on the part of Benjamin T. Lee being complied with, that such compliance shall thenceforth be deemed and considered as a full satisfaction of all or any balance that may remain due thereon, and that said judgment shall thereafter be of no force or effect, except for the protection or confirmation of the title of lands which the said Cogswells and Kinney have derived from or through said George W. Lee.

Dated August 18th, 1843.

N. B.—The 16 school sec. lots struck out.

F. S. KINNEY, *for self and L. and J. Cogswell.*
B. T. LEE, *Administrator on Estate Geo. W. Lee.*

UNITED STATES OF AMERICA,
State of New York, City and County of New York, ss:

I, Nathaniel C. Kinney, a public notary in and for the State of New York, duly commissioned and sworn, dwelling in the city of New York, do certify that the foregoing deposition of Franklin S. Kinney was duly made and taken before me, as above set forth, pursuant to the stipulation signed by the solicitors of the parties hereto annexed; and that at the taking of said deposition, the original exhibits referred to therein, and marked, respectively, A, B, C, D, E, F, G, H, I, and J, were produced and so marked before me; and that pursuant to another stipulation, also hereto annexed,
102 signed by the solicitors of the parties, true copies of the said original exhibits are hereto annexed in the place of said originals; and I further certify that the said copies of the said original exhibits are true and correct copies thereof, the same having been carefully compared by me with said original exhibits.

In testimony whereof, I have subscribed my name and caused my notarial seal to be hereunto affixed the thirtieth day of August, one thousand eight hundred and fifty-nine.
[SEAL.]

N. C. KINNEY, *Notary Public.*

Notaries' fees, $50 00. Paid by complainant. N. C. K.

103 Complainants also offered and read in evidence the letters attached to the stipulation dated October 2d, 1861, as follows:

"NEW YORK, *April* 17, 1841.

"MY DEAR FRIEND LEE: Your letter, with copy law, &c., in regard to the canal lands, came duly to hand, and I have delayed writing until Dr. Cogswell arrived. He came yesterday, and I now send you the six certificates indorsed in blank by Miss Cogswell, and her power of attorney for you to act. I am so occupied to-day as to be unable to write you further, but will do so soon, addressed to you at Chicago, in which I will express my views as to a choice of lots and other matters. Mr. and Miss Cogswell prefer to have the conveyance made direct to the latter from the commissioners, and we had rather incur the expense of investigation, if any. Your embarrassments being known, the title will be better in Miss Cogswell.

"In haste, yours,

"F. S. KINNEY.

"Write me when the taxes will become due on the lands you entered near Ottowa."

104 Know all men by these presents, that I, Lois Cogswell, of the city of New York, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, George W. Lee, of Kishwaukee, Illinois, my true and lawful attorney, for me, and in my name, place, and stead, to do and perform all such acts, deeds, and things, and make and execute all such instruments in writing as he may deem proper and necessary to avail myself of the benefit of the act of legislature of the State of Illinois, recently passed for the relief of purchasers of canal lands, and have the benefit thereof in regard to the lands purchased by said Lee, as per six receipts dated June 25, 1836, signed G. S. Hubbard, treasurer Ill. and Mich. canal, and numbered 190, 191, 192, 195, 196, 197, and by him assigned to me, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause
105 to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal the sixteenth day of April, in the year of our Lord one thousand eight hundred and forty-one.

LOIS COGSWELL. [SEAL.]

Sealed and delivered in the presence of—
R. W. TOWNSEND.
GARD. SPRING, Jr.

UNITED STATES OF AMERICA, *City and County of New York, ss:*

Be it known, that on the sixteenth day of April, one thousand eight hundred and forty-one, before me, Gardiner Spring, junior, a public notary in and for the State of New York, duly commissioned and sworn, dwelling in the city of New York, personally came Lois Cogswell, of the city of New York, to me known to be the same individual described in and who has executed the aforegoing letter of attorney, and acknowledged the above letter of attorney to be her free act and deed.

[L. S.] In testimony whereof, I have hereunto subscribed my name and affixed my seal of office the day and year last above written.

GARD. SPRING, *Notary Public.*

"My Dear Friend Lee: Your letter, containing an account of your
106 proceedings relative to the canal lands, was duly received. I delayed for some time writing to you, expecting to see Doctor and Miss Cogswell, who have been for some time expected here. They have not yet arrived; Miss C. being on a visit at Mr. Dixon's, in Hartford. Without further delay, I thought I would at least advise you of the receipt of your letter, and say that I think your choice of lots a good one. I wish, however, you would write me how you propose to have the ownership of the land stand hereafter; that is, what portion will belong to the joint account of yourself, the Dr., Miss C., and myself, under the original purchase. I have collected from Monell about $600, by hard pressure. He has left the profession and gone to the western part of the State, as agent for a land co. He promised to send me the balance during the winter. I think I shall get something more from him, but I fear not all at present. I have paid Mr. Thurston $200 for you. I have arranged with Morse & Hoop, and
got up your deeds. De Billon Du C. have been absent in Europe,
107 and the latter just returned. I have seen D. B. to-day, and shall fix the business with him next week and send you the papers. Draper cannot find the original contract, but he considers the affairs as all settled.

"We are quite well at home; tell brother I shall write him in a day or two. Kind regards to Mrs. Lee.

"Cordially, yours,

"F. S. KINNEY.

"I think I wrote you I had settled with Garbergs."

"N. York, 15 *Nov.*, 1841.

"My Dear Friend Lee: I wrote you a hurried letter some days since, desiring, among other things, a more particular statement of your proceedings in regard to the canal-lands consolidation, so that I could communicate to Mr. and Miss Cogswell. You have, I observe, consolidated upon a lot on the east side of the creek, which was your sole purchase. How did you propose to bring that into the joint account? Put the matter in the shape you think about right, and we shall agree to it, I presume, without
difficulty; but we had better understand it now while it is fresh
108 in recollection. We want the titles in Miss Cogswell, same as before. De Billon and Du Coppet are behaving very singularly, after separately agreeing to give you a quitclaim upon your releasing their mortgage; they now hesitate, and I fear there may be some trouble. It has so happened that they have not both been here together, except for a short time this fall, for several months, and De B. is now gone to France again. He is in the French importing business. They both put me off waiting for each other. They have taken some legal advice, and seem inclined to have a lawsuit, but you are so far off, do not know how to get at you. They complain only of your representations as to distance and value, and have no hint as to the defect of title. Do you think it worth while to give them anything if I cannot arrange without? You have now the scrip or State bonds, to the amount of some $500, which I should like to have you send to me, as I can use them here. I believe I mentioned that Monell has left the profession and gone to Alleghany co., in
charge of a land agency He paid me what he could, and promises
109 the rest this winter in instalments. He is really poor, and wrote his friends for the amount he paid.

"I have been very much engaged, which has prevented me from writing you more frequently. Are there any whigs in your region in these days? They are rarely to be met with here. Kind regards to Mrs. Lee.

"Cordially, yours,

"F. S. KINNEY."

"NEW YORK, *March* 1, 1842.

"MY DEAR FRIEND LEE: Your letter of 2d Feb. reached me in due course, but the further communication it promises has not yet come to hand. Dr. Cogswell, after spending a few days here, left us this morning; and both he and Miss Cogswell specially desired me to ask your early attention to the subject of the property, in which they, yourself, and me are jointly interested. They specially desire to have the titles put in the name of Miss C., the propriety of which you will readily admit, and will, of course, accomplish as soon as a settlement is agreed to in respect to the lots consolidated at Chicago. Let that matter, therefore, be arranged as speedily as possible. If you should then desire to make some arrangement to close the whole contract, send a proposition to that effect and it shall have a favorable consideration. What has become of the 'colony?' I don't remember that you have spoken of it at all. Will you be careful to pay the taxes on all the lands in which we are interested, including the half section of the government lands which I sold, viz., the east half of sec. 20? And for this last send me a separate receipt, so that I can get it from the purchaser. Ogden is still here, but with very little prospect of raising funds at present for the railroad. All operations of that sort are at an entire stand-still. The position which Indiana has taken in regard to her debt increases the value of her lands, as it frees them from the incubus of oppressive and burthensome taxation. Will not Illinois take the same grounds; and will not her lands be thereby greatly increased? As to paying the principal or interest, it seems to me out of the question. She may, by and by, compromise, but to enable her to do even that she must have her lands settled. And she cannot have her lands settled without, in effect, repudiating her debt. De Biller is expected to return again soon from Europe, and I shall then make a final attempt to settle with him and D. Coppit. Your plan of assigning the mortgage will be of no avail, as they can set up any defence against the assignee which they could against you; a mort., in that respect, being different from a note. The new P. M. G. was so strict in regard to officers who officiated by deputies that I thought best to resign, and seek, as Mr. Clay says, 'the repose of private life.' I have, therefore, to beg you will suffer your frank to carry as much of our correspondence as you think she can bear. I shall endeavor to visit you in May or June, but, at present, cannot speak with much certainty on the subject. I sent you the Herald with an account of the Boz dinner. It was a great mental treat. The report, though good, gives one but a faint idea of the scene. If you can get the Old Curiosity Shop you will be delighted with it. My kind regards to Mrs. Lee and the children.

"Cordially, yours,

"F. S. KINNEY."

"EAST WINDSOR, (CON.,) *June* 10, 1842.

"MY DEAR SIR: Some time since, when I was in N. York, Mr. Kinney informed me that you had consolidated, if that be the proper term, our purchases in Chicago, and that you would soon make some propositions to him. A few days ago I saw him; we observed that nothing had been done. I feel anxious to know how matters stand, and whether any sales can be made, even on credit. N. Cogswell has failed, and I expect we shall lose, I know not how much, by him. You know I am the largest purchaser, and yet I know nothing of the state of our property. I am called upon to pay the money I borrowed for the purchase, which, as yet, I have not paid. I wish to know whether the taxes have been paid or not. We are willing to

pay you for your trouble, if you will attend to our concerns. I wish you could sell some of the lot near Ottowa, or a lot in Chicago. We hear that a great deal of money is going to the west for wheat, &c. Be good enough to write, and let us know all about affairs. The season here is very
113 unpromising, which must raise the price of flour in the autumn. It seems to me that some sales may be made this year. More than 22,000 emigrants arrived in N. York in April and May, said to be mostly farmers. Some will, no doubt, go to Illinois. I am happy to say we are now, so far as I know, all well; and be assured shall rejoice in your prosperity, and be happy to see you.

"Very affectionately,

"YOUNG COGSWELL."

"NEW YORK, *July* 1, 1842.

"DEAR FRIEND LEE: The last letter I had the pleasure of receiving from you related to the lands at Chicago, &c. The Dr. and Miss Cogswell had it for a time, and perhaps the former took it with him, as I am not able to find it at present. I will, therefore, defer saying anything in reply until I find the letter. It is, in fact, a difficult matter to say what is best to be done, under the circumstances. Cogswell's failure has embarrassed them and me, and we should be very glad to realize something out of our investment.
114 Your management of the matter was our great inducement to enter into it, and we might almost as well throw the whole away as attempt to manage it ourselves at this distance. My main object, however, in addressing you at this time is in regard to the taxes, which I wish you to attend to, and see paid, on all the property we are jointly interested in. Don't fail in this. Business is in a hard state here; no tariff, and everything at sixes and sevens; and what is worse, there is small prospect of anything better. Rents have fallen one-half in three years, and we are now down, in fact, to the specie basis in everything, except paying debts, in which there is no let-up. I think I shall be able to arrange your matter with De Billun after a while; but he is very obstinate about it. He is now in Europe. I have pretty much agreed with Du Coppit, and if De B. sanctions the arrang't on his return, the business will be settled. Brother George wrote me he thinks of storing the goods for a while in a chamber, as they him so much, and desires me to write you on the subject. I should be glad to have his wishes gratified, but want to have the goods
115 kept safe from thieves and robbers. I have written for him to send me a box of the goods, about three or four hundred dollars' worth, I suppose. I am gratified to learn you are in nomination for the legislature, and hope, most earnestly, you will succeed. A few such men as yourself would do the State inestimable service at this juncture.

Please remember me very kindly to Mrs. Lee and the little ones, and be assured I remain, as ever, your true friend,

F. S. KINNEY.

GEO. M. LEE, Esq.

N. B.—What has become of the little joint purchase you made at the tax sale at Chicago, I think it was? You will, of course, see to the taxes on that also.

N. YORK, *Oct.* 28, 1842.

MY DEAR FRIEND: The welcome appearance of your own sign-manual, upon your letters of the 12th and 14th Oct. inst., has done more than anything to break the gloom which the recent melancholy events have *have* thrown around me. I had sad forebodings for you, my old and valued friend,

116 and thank God for your partial recovery, and shall earnestly pray that it may soon be complete. It grieves me that you should have been subjected to the annoyances you detail. From Mr. Udell's letter to me, of 9th inst., I did not like his proceedings, and wrote him immediately (on the 19th) a strong letter, desiring him to desist from doing anything against your wishes, and assuring him that you had my fullest confidence. That letter I desired him to show to mother, and will, I presume, have put an end to his interference. The enclosed letter to mother is to the same effect, as is also another directed to her, Rockford; she has, as you suggest, been badly, if not wickedly, advised, but you must not attribute any thereof to her, but advise with her as though it had never fell out so unfortunately. If you should be well enough to send me the articles which I mentioned in my letter to my brother, before the navigation closes, I should be glad to have you do so. I can use the silks to advantage now. Be careful to have them well packed and boxed and directed to me at 84 Cedar street,
117 where my office now is. Do not despair, my dear friend; you will see pleasant days yet. I shall visit you early next season, and we can then arrange all our matters, I doubt not, to your satisfaction. In mean time you had better, I think, convey the Chicago property to Dr. or Miss Cogswell to make them feel satisfied and guard against accident. It will, of course, be best not to have any controversy with Mr. Udell, but treat the matter as though he was mistaken, &c. Poor Cogswell, we miss him much. In a former letter I mentioned his death, which took place on the 10th inst., at Hartford, where he was staying with Mrs. Dixon. He had a bilious fever first and partially recovered, but relapsed into a typhus, which proved fatal in about five days after. My kind regards to Mrs. Lee and the children. We are quite well at home.

Sincerely your friend,

F. S. KINNEY.

EAST WINDSOR, *Oct.* 18, 1842.

MY DEAR SIR: Great and important changes have taken place in
118 our family since the present year commenced. Wm. H. Cogswell failed early in the year, and died last week, on Monday, of typhus fever. My sister found it necessary to leave her home and sell most of her furniture. The joint liabilities of Mr. Kinney and Mr. Cogswell, in consequence of the failure and death of the latter, fall pretty heavily on the former. Whether he will be able to bear the load or not, it is not possible for me to determine, as he never makes known to me the state of his affairs. He informed me last week that you had made out the deeds of the *consolidated* canal lots in Chicago in the name of my sister, and said she could, by deed, convey them to me, which has already been done in Hartford, (Con.,) where she now is. The whole of the lands and lots which you purchased for the company, and which were conveyed to my sister, have been, for safety, conveyed to me, and are now, of course, under my control. If the deeds ordered of the canal lots, made out in the name of my sister, is not recorded, will you have the goodness to change the name and either make it in my name and have it recorded and sent it to me? The expense I will very willingly pay. If I can have the deed or deeds I can make
119 sales, I think, next season. As I am now advanced in life, I wish to have my affairs settled. I am the more anxious to sell my western lands and lots for something, because *almost every time I go to New York* I am urged to pay the money I borrowed for the investment, which it has not been convenient for me to pay the estate of my late brother without great sacrifices. I do not know, my dear sir, why I am kept so much in the dark respecting our purchase of western lands, when I invested $5,000, for which

I am required to pay 9 per cent., my sister $3,000, and Mr. K. $2,000, now reduced by a sale to one of his creditors to $1,500. Though I have requested you to write me, as the largest proprietor, yet you still Mr. Kinney, who gives me very little information. I must confess this troubles me not a little. I never expected to pay the $5,000 till the western lands were sold for something, more or less. As things are now, $5,000, with the interest since it was borrowed, would take every dollar I have, except my house and furniture, which, at my time of life, would be a serious inconvenience. But, as I before observed, I am constantly pressed to pay, though it must be at a sacrifice. Now it is easy for you to send the deed of the canal lots
120 *recorded* in my name, and I can find some one to attend to the business, if you cannot, next spring. If you will attend to the business yourself I will very cheerfully pay you. It may now all be managed so as to give me no trouble, but I do feel uneasy respecting my indebtedness to the estate of my late brother, and more especially as N. Cogswell, for whom I am responsible, died indebted to a considerable amount. Now, my dear sir, I shall esteem it a great favor if you will, as soon as convenient, write to me and let me know the real state of things. All may be right, for aught I know. What, in your judgment, is the present value of the property? What would any of it probably sell for next spring on credit, 10 per cent. paid on delivery of deeds? As it is now all conveyed to me, I shall soon write to some one in Chicago on whom I can depend, and make inquiries. Be assured if anything can be made you shall partake of the profits. I would not make a wrong impression respecting my present indebtedness. I have paid the interest on the loan borrowed of the estate and reduced the principal to $4,000. If you will as soon as convenient write, and as soon also as convenient give your attention to the concern, you shall not
121 have reason to regret it. This is confidential. I wish, in these times, that you should know just how things with us are situated, then you will understand how to act. Be good enough to remember us to Mrs. Lee, and believe me to be, with sincere affection and esteem, yours,

Y. COGSWELL.

It is agreed that the letters and power of att'y hereto attached may be read in evidence, without proof of handwriting of signatures, on the hearing of the case of Dodge *et als. v.* Lee *et al.*, in chancery in U. S. court, and also that the same were received by Geo. W. Lee in his lifetime, and found among his papers at his decease.

SCAMMON, McCAGG & FULLER,
Sol's for Compl'ts.
J. F. FARNSWORTH,
Solicitor for Def'ts.

OCT. 2D, 1861.

The defendants then read in evidence the deposition of Benjamin T. Lee, on file in this cause.

122 In the circuit court of the United States, northern district of Illinois.

WILLIAM E. DODGE, DANIEL JAMES, JAMES STOKES, D. WILLIS JAMES, AND WILLIAM E. DODGE, JR.,
vs.
LOUIS H. LEE, HARRIET T. LEE, GEORGE S. LEE, AND JOHN G. THURSTON *et al.*
} Bill.

The disposition of Benjamin T. Lee, a witness in the above-entitled cause, taken by Charles H. Machin, a notary public in and for the city of Chicago, in the county of Cook and State of Illinois, on the 22d and 23d days of No-

vember, A. D. 1859, at the office of John L. Beveridge, esq., in said county, taken on the part of the said defendants, Messrs. Scammon, McCagg, and Fuller, appearing for plaintiffs, and Mr. Beveridge for defendants.

The counsel stipulating that all objection to the questions propounded should be waived during the examination, and to be made at the hearing of the cause.

STATE OF ILLINOIS, *Cook county, ss:*

Benjamin T. Lee, being duly sworn in answers and interrogatories propounded to him, deposes and says as follows, viz:

Interrogatory first. What is your name, age, residence, and occupation?

123 A. My name is Benjamin T. Lee; age, 48 years; reside at Milwaukee, Wisconsin.

2. Do you know the parties to this suit, plaintiffs and defendants; which of them, and how long have you known them?

A. I am acquainted with the defendants, Lewis H. Lee, Harriet T. Lee, Geo. S. Lee, John G. Thurston; I have known the Lees from infancy, John G. Thurston for 30 years; I am not acquainted with the plaintiffs.

3. State who is the father of the said Lees, and give their respective ages, and what relation you sustain to them.

A. George W. Lee, deceased; Lewis H. is 22 years old; Harriet T. about 20; George S. about 18 years old. George W. Lee was a brother of mine.

4. When and where did the said George W. Lee die? Were you present during his last sickness and death; if so, how long?

A. He died at Kishwaukee, Illinois, in 1842, 16th of November; I was present at his death, and about ten days previous thereto.

5. Had the said George W. Lee any other children living, save the defendants in this suit mentioned, at the time of his death?

A. He had one son named Sanford, since died, without issue.

124 6. Do you know one Lois Coggswell, Jonathan Coggswell, Franklin S. Kinney; and if yea, how long have you known them?

A. I do not know the Coggswells; have known Kinney 30 years.

7. When did the said George W. Lee move to this State, and what business was he engaged in here?

A. I think the fall of 1838; he was engaged in real estate operations during the remainder of his life.

8. Who administered upon the estate of George W. Lee?

A. I did.

9. Look at the paper marked Exhibit E, attached to the deposition of Franklin S. Kinney, the deposition heretofore taken by the complainants in this cause, and state if you ever before saw such paper; and if yea, when and where did you first see it?

A. I have seen it before, and I first saw it with my brother's papers after his death, a few weeks after his death.

10. Examine said paper carefully, and state if it is in the same condition as when you first saw it; and if not, state the alterations that have been made, if any.

A. It is not in the same condition it was when I found it; the name of Lois Coggswell is inserted in it three times by myself, in my hand-
125 writing. The certificate of Selden M. Church has been added since, and the words "of New York" after Lois Coggswell's name.

11. To whom was said paper delivered, if to anybody, and by whom?

A. I delivered that deed to Franklin S. Kinney about the 6th of June, 1843.

12. State when and where the alterations, referred to by you, were made

in said instrument, and under what circumstances; state fully and particularly.

A. In the City Hotel, at that time kept by Jacob Russell, in this city, now the Sherman House, and at the time of the delivery of the deed for the purpose of cancelling a judgment then held by Jonathan Coggswell, and on record in Will county, Illinois, against the said George W. Lee, amounting to about $5,000, said property so conveyed in said deed, together with lot 1, and E. ¾ of lot 2, B. 45, original town of Chicago, and also about 219 acres of land in Lasalle county, Illinois, were to form the consideration for which Mr. Kinney agreed he would, subsequently, when he returned to New York, would convey to me a full discharge of all obligations held by the Coggswells against the estate of George W. Lee, deceased.

13. Who was present at the time of the delivery of the said deed by you to the said Kinney, and what *what* was the consideration for such
126 delivery?

A. There was no one present; no consideration at that time, further than a promise.

14. Was Mr. Kinney present at the time of the insertion of Lois Coggswell's name by you in said deed; and who suggested the insertion of her name, if anybody?

A. He was; and first suggested the insertion.

15. Examine the papers marked Exhibit B and C, as attached to the said deposition of Kinney aforesaid, and state whether, during your brother's last sickness, he or his family received any letters from the said Kinney in answer to said exhibits, or whether you ever saw among George W. Lee's papers any letter or letters from said Kinney purporting to be answers thereto.

A. I opened some 2 or 3 letters to George W. Lee from Franklin S. Kinney, during his illness, but neither referred to the papers exhibited. I did not find among his papers any letter or letters purporting to be answers thereto.

16. Did you ever hear your brother say anything about a proposition of settlement being made by letter or otherwise to said Kinney, or said Kinney and Coggswell, of his or their acceptance thereof?

A. I heard my brother say that he expected Mr. Kinney out west, and that he was agoing to give up the company property to them if they would release the judgment they held. I didn't hear anything about a proposition having been made.

127 17. At the time of the delivery of the deed to Mr. Kinney, were you acting under, and carrying out, any previous arrangement for settlement between the said George W. Lee and the said Kinney and Coggswells, or otherwise?

(Interrogatory 17th withdrawn.)

18. State whether or not, at the time of the delivery of the said deed to the said Kinney, he claimed to be entitled to the same by virtue of any previous agreement between him and George W. Lee.

A. He did not.

19. State whether the delivery of the deed to Mr. Kinney was voluntary on your part, or done at his solicitation?

A. It was delivered upon his urgent solicitation, coupled with assurances that he would make a satisfactory arrangement when we met in New York, urging at the time of the delivery of the deed the importance of his having it with him to take to Rockford to be recorded.

20. State, if you know, when the clerk's certificate, signed Selden M. Church, was procured, and by whom; and was it not for the purpose of procuring such certificate that Mr. Kinney desired to take the deed to Rockford?

A. It was procured by Mr. Kinney subsequent to my delivery of the deed to him; it was for that purpose.

128 21. Did you afterwards meet Mr. Kinney in New York, and come to any arrangement with said Kinney and Coggswell in regard to their claim against the estate of George W. Lee?

A. I did.

22. Look at Exhibit J, attached to the deposition of Franklin S. Kinney, and state if that is the agreement referred to in your last answer.

A. It is.

23. Is the agreement, marked Exhibit J, as aforesaid, a compliance, or a substantial compliance, with the terms of the agreement between you and Mr. Kinney at the time of the delivery of the deed?

A. It is not.

24. State, if you know, whether the said Kinney had any individual claim against the estate of George W. Lee; and if so, state if the same was arranged by you as administrator of said estate.

A. My brother and Mr. Kinney were indebted to each other for sundry things. Mr. Kinney professed to have a balance of a few hundred dollars due him, for which I consented that he should have the piano belonging to the estate, with the understanding that he should convey the same to the widow of the deceased.

25. Look at Exhibit I, of the said Kinney's deposition, and state if that paper contains the agreement referred to in your last answer; and state also if the piano therein mentioned was ever delivered to the said Kinney.

A. It is the agreement referred to.

129 A. It was.

26. Was any agreement ever made, or understanding had, between you and the said Kinney, that any lands were to be sold under the said judgment in Will county to satisfy the individual claim of the said Kinney against the estate of George W. Lee?

A. There was not.

27. Look at Exhibit J, aforesaid, and state if you are acquainted with the lands therein mentioned, marked in the margin of said exhibit, "at Kishwaukee, Winnebago county, Illinois," and the other lands thereafter described; and if yea, state what was their value in 1843.

A. I was acquainted with them; they were worth from three to five dollars per acre.

28. Had you any conversation with your brother, George W. Lee, during his last illness relative to his business with said Kinney and Coggswells; if yea, state the same.

A. My brother never referred to any busines transaction whatever during his last illness, except in relation to a stock of merchandise then at Kishwaukee in his possession, belonging to Mr. Kinney.

29. Did you have any conversation with George W. Lee during his last illness, or at any other time, in which reference was made in any way to the deed delivered by you to Mr. Kinney?

A. None whatever.

130 30. Did George W. Lee, during his last illness, or at any other time, ever inform you, or lead you to understand, that there had been terms of settlement agreed upon between him and Mr. Kinney and the Coggswells?

A. He did not.

31. Was anything said to you by your brother during his last illness about your administering upon his estate in case of his decease?

A. The subject was never spoken of.

32. At the time of the delivery of the deed by you to Kinney at the hotel in Chicago, was it understood between you and Mr. Kinney that you were

making such delivery in fulfilment of any previous agreement or understanding of the parties interested?

A. There was no such understanding.

33. Did you find among the papers of the said George W. Lee any other papers in the same condition as the deed delivered to Kinney, as aforesaid?

A. I think there were one or more of Kishwaukee lots in the same unfinished state.

34. Did you find among the papers of said George W. Lee any letters from Franklin S. Kinney of then recent dates? If yea, state if you
131 examined their contents.

A. I think I found one or two, received previous to his death, besides the one I opened during his illness.

35. Did you find in any of such letters any reference to a proposition of settlement before that time made?

A. I did not.

Cross-examination.

Cross-interrogatory first. What was the complaint of which George W. Lee died, and how long was he sick during his last illness?

A. He died of bilious fever, after about ten days' severe illness.

2. Where were you residing at the time of his death, and how came you to be with him at that time?

A. My family resided 7 miles distant, but I was with him day and night, during his illness, at his particular request.

3. Was he so ill as to require attendance day and night?

A. A portion of the time he was.

4. How much of the time?

A. About four days, and the remainder it was not considered
132 proper for him to attend to his business matters, which he intrusted to me.

5. At what time, and how, did you advise Mr. Kinney that you had found among your brother's papers, the paper referred to by you in your direct examination, marked Exhibit E?

A. When I met him in Chicago I informed him personally of the existence of that deed.

6. Was that the time at which you delivered said deed to him?

A. It was the same day.

7. Where you living at that time?

A. Near Rockford, Illinois.

8. What was your business in Chicago, or your reason for coming to Chicago that day?

A. I was on my way east with my brother's family, and met Mr. Kinney, by appointment, in relation to the disposal and care of his stock of goods then at Kishwaukee.

9. When and how was that appointment made with Mr. Kinney?

A. By my previously writing to him.

10. To what place did you address the letter by which this appointment was made with Mr. Kinney?

A. To New York.

11. Then your business in Chicago was, in part, to meet Mr. Kinney?
133 A. It was.

12. Had you at that time any other deeds or papers of your then late brother George W. Lee, brought with you by reason of your appointment to meet Mr. Kinney? If so, state what they were.

A. I had papers with me relating to Kinney's goods, and think I may have had others in relation to real estate, but do not recollect particularly.

13. Where, at this time, was the deed of the property on the west side of the river, referred to by you in your direct examination?

A. I think it was left by me at the recorder's office, in Chicago, at Kinney's previous request.

14. When and how was this request made?

A. By Mr. Kinney, by letter, subsequent to my brother's death.

15. How long after this was it before you next met Kinney, and where did you next meet him?

A. About one month after, in New York city.

16. Were the Coggswells, or either of them, present at this last meeting, or at any meeting between you and Kinney?

A. They were not.

17. Have you ever had any conversation or made any arrangement with the Coggswells, or either of them, personally, about this matter?

134 A. I have not; I never saw either of them, to my knowledge.

18. Did not Kinney make another claim against the estate of your brother, besides the one you have mentioned, in satisfaction of which a piano was given?

A. He did not.

19. Did not Kinney, to your knowledge, have a claim against your brother's estate for $1,500?

A. He professed to have, but not over and above my brother's private account against him.

20. At the time you made the settlement with Kinney in Chicago, was there, to your knowledge, an execution, outstanding and alive, issued upon the judgment in favor of Mr. Coggswell and against your brother?

A. My impression is there had been an execution issued, but don't know that it was then alive.

21. What did you do with the deeds for Kishwaukee lots that you found in your brother's papers after his decease?

A. I do not recollect distinctly whether they were left with refuse papers and given to my successor, or destroyed.

22. What was the reason, if any, why the judgment against your

135 brother and in favor of the Coggswells was not discharged at the time you met Mr. Kinney in Chicago?

A. My great haste to get east, and his to go west.

Direct ex'n resumed.

1. Did the deed of the property on the west side of the river contain the name of the grantee when you found it among your brother's papers?

A. It did.

2. At what time, and how, did you advise Mr. Kinney of the existence of that deed?

A. By letter, after his death.

The witness desires to say, in correction to his statement in the direct examination, that in relation to the deed given to Kinney, in Chicago, Mr. Kinney alleged that he was anxious to have the deed at that time for the purpose of obtaining the clerk's certificate at Rockford, previous to recording in Chicago.

BENJAMIN T. LEE.

136 STATE OF ILLINOIS, *Cook county, ss:*

I, Charles H. Machin, a notary public in and for the city of Chicago, in the county and State aforesaid, do certify that the above deposition was taken by me at the time and place mentioned in the caption thereof; that

the said witness was first duly sworn, and that the said deposition was carefully read to the witness and signed by him.

Dated this 23d day of November, A. D. 1859.

CHARLES H. MACHIN, *Notary Public.*

Opened for defendants' solicitor and filed Feb. 6, 1860.

WM. H. BRADLEY, *Clk.*

137 The defendants then offered in evidence the record of a judgment rendered in Will county, State of Illinois, and an execution and return issued thereon, and a sheriff's deed issued thereon, as follows:

(At the time of making this record according to the stipulation, there should be an execution to the sheriff of Winnebago county, and also a deed from said sheriff, but they do not appear in this record, from the fact they are not furnished, but a memoranda of what purports to be certificate of levy and a copy of the sheriff's deed is inserted in lieu thereof, by consent of the parties.

WM. H. BRADLEY, *Clk.*)

138 Will county circuit court, of the March term thereof, 1840.

STATE OF ILLINOIS, *Will county:*

Pleas before the honorable John Pearson, judge of the eleventh judicial circuit court of the State of Illinois, at a term thereof begun and held in and for the county of Will, and State of Illinois, at the court-house in Juliet, on the ninth day of March, in the year of our Lord one thousand eight hundred and forty, it being the second Monday in the said month of March, and of the independence of the United States the sixty-fourth.

Present: The Hon. John Pearson, judge; Alonzo Huntington, State attorney; Fenner Aldrich, sheriff; Levi Jenks, clerk.

Be it remembered that afterwards, to wit, on the 14th day of March, in the year of our Lord one thousand eight hundred and forty, Jonathan Cogswell, by his attorney, Hugh T. Dickey, filed in the office of the clerk of the circuit court of Will county his certain declaration in an action of assumpsit against George W. Lee, which said declaration is in the words and figures following, to wit:

State of Illinois, Will county circuit court, of the March term, in the year of our Lord one thousand eight hundred and forty.

139 STATE OF ILLINOIS, *County of Will, ss:*

George W. Lee, defendant in the suit, was summoned to answer unto Jonathan Cogswell, plaintiff in this suit, of a plea of trespass on the case on promises; and thereupon the said plaintiff, by Hugh T. Dickey, his attorney, complains of the said defendant, for that whereas the said defendant, on the first day of March, in the year one thousand eight hundred and forty, at Juliet, to wit, at the town of Juliet, in the county and State aforesaid, was indebted to the said plaintiff in the sum of seven thousand dollars, of lawful money of the United States, for money by the said plaintiff, before that time, lent and advanced to the said defendant, and at his special instance and request; and for other money by the said defendant before that time had and received to and for the use of the said plaintiff, and being so indebted, and in consideration thereof, the said defendant afterwards, to wit, on the same day and year last aforesaid, to wit, at the place aforesaid, undertook and faithfully promised the said plaintiff to pay him the said sum of money last-mentioned, when he, the said defendant, should be thereunto requested.

Yet the said defendant hath not paid to the said plaintiff the whole or any part of the said sum of money above mentioned, although after requested, &c.; but to pay the same, or any part thereof, to the said plaintiff, the said defendant hath hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of the said plaintiff of seven thousand dol-
140 lars, and therefore he brings suit, &c.

H. T. DICKEY, *Att'y for Pl'ff.*

Copy of account declared on in the above declaration:

George W. Lee, Dr. to Jonathan Cogswell.

1836.
May 4th. For money lent by J. Cogswell to G. W. Lee, at this date.. $5, 000
Interest on do. from May 4th, 1838, to this time, at 7 per cent.

H. T. DICKEY, *Att'y Pl'ff.*

And afterwards, to wit, on the day and year last aforesaid, the said plaintiff, by his said attorney, also filed in the office of the clerk of the circuit court of Will county a certain power of attorney, made and executed by the said defendant, which said power of attorney is in words and figures following, to wit:

"Whereas I, George W. Lee, am justly indebted unto Jonathan Cogswell, of the State of Connecticut, in the sum of five thousand dollars of lawful money of the United States, for money lent and advanced by the said Jonathan Cogswell unto me, the said George W. Lee, on or about the fourth day of May, in the year 1836, together with interest on the said sum at the rate of seven per cent. per annum from the fourth day of May, A. D. 1838:

141 "Now, therefore, know all men by these presents, that I, the said George W. Lee, have authorized and empowered, and by these presents do authorize and empower Hugh T. Dickey, or any other attorney of any court of the State of Illinois, to appear for me at the Will county circuit court to be holden at Juliet, in said county, on the second Monday of March next, or at any previous term of said court, in said county, in case any should be held previous to said time, or at any subsequent term of said court for the county of Will and State aforesaid, and then and there to confess a judgment for me and in my name unto the said Jonathan Cogswell against me, the said George W. Lee, and cause the same to be duly entered up for the said sum of five thousand dollars ($5,000) so due and owing by me as aforesaid, unto the said Jonathan Cogswell, together with interest thereon at the rate of seven per cent. per annum from the fourth day of May, A. D. 1838, until the entry of said judgment as aforesaid, and I do further authorize and empower my said attorney to release all error or errors in the entering up of said judgment.

"In witness whereof, I have hereto set my hand and seal this 8th day of Febuary, A. D. 1840.

"GEORGE W. LEE. [SEAL.]

"Sealed and delivered in presence of—
"F. A. HAVEN.

"Words 'until the entry of said judgment as aforesaid,' interlined."

142 "STATE OF ILLINOIS, *County of Cook, ss:*

"I, Frederick A. Howe, a justice of the peace, in and for the said county, in the State aforesaid, do hereby certify that George W. Lee is personally known to me as the same person whose name is subscribed to this annexed letter of attorney, appeared before me this day in person and acknowl-

edged that he signed, sealed, and delivered the said letter as his free and voluntary act, for the uses and purposes therein set forth.

"Given under my hand and seal at my office in Chicago, in the county aforesaid, this 8th day of February, A. D. 1840.

"F. A. HAVEN, [SEAL.]
"*Justice of the Peace.*"

And afterwards, to wit, on the day and year last aforesaid, the said plaintiff, by his said attorney, filed in the office of the clerk of the circuit court of Will county his certain cost bond, which said bond is in words and figures following, to wit:

"Will county circuit court.

"JONATHAN COGSWELL }
vs.
"GEORGE W. LEE. }

"I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay all costs that may accrue therein, either to the opposite party or to any of the officers of this court.

"Dated 14 March, A. D. 1840.

"H. T. DICKEY."

143 And afterwards, to wit, on the day and year last aforesaid, it being one of the regular days of said term of said court for the year last aforesaid, and the same being duly organized and sitting for the adjudication of business, the following among other proceedings were had and entered of record in said court, in the words and figures following, to wit:

"JONATHAN COGSWELL }
vs. } Assumpsit.
"GEORGE W. LEE. }

"This day comes into court the plaintiff, by Mr. Dickey, his attorney, and filed his declaration against the said defendant, and thereupon Mr. Newkirk, one of the attorneys of this court, appeared in open court in behalf of the said defendant, and by virtue of a warrant of attorney for that purpose, executed by the said defendant and now produced in court, duly executed and acknowledged, waived the issuing and serving of process, and acknowledged that the said defendant did assume and promise in manner and form as the said plaintiff hath complained again him, and confessed that the said plaintiff hath sustained damages by reason thereof to five thousand six hundred and fifty-one dollars and thirty-two cents.

"Therefore it is considered that the said plaintiff recover of the said defendant the said sum of five thousand six hundred and fifty-one dollars and thirty-two cents, his damages so confessed as aforesaid, and also his costs in the behalf expended, and that execution issue therefor, and by virtue of
144 said power of attorney all error in entering up this judgment is hereby released."

And afterwards, to wit, on the day and year last aforesaid, the costs in said suit were taxed by the clerk of said court, amounting to $5 75.

And afterwards, to wit, on the 30th day of March, in the year of our Lord one thousand eight hundred and forty, there issued out of the office of the clerk of the circuit court of Will county an execution against the goods and chattels, lands and tenements of George W. Lee, which said execution is in words and figures following, to wit:

STATE OF ILLINOIS, *Will county, ss:*

"The people of the State of Illinois to the sheriff of Winnebago county, greeting:

"We command you that of the goods and chattels, lands and tenements of George W. Lee, in your county, you cause to be made the sum of five thousand six hundred and fifty-one and $\frac{32}{100}$ dollars, which, by the judgment of our circuit court within and for the said county of Will, at the March term thereof, A. D. 1840, Jonathan Cogswell recovered against the said George W. Lee, for his damages, which he has sustained by reason of the not performing certain promises and undertakings then lately made by the said George W. Lee to the said Jonathan Cogswell, and also the further sum of five $\frac{75}{100}$ dollars, which were adjudged to him for his costs and charges in that behalf expended, whereof the said George W. Lee is convicted, as appears to us of record, and have that money ready in
145 ninety days from the date hereof, to render to the said Jonathan Cogswell for his damages and costs aforesaid. Hereof fail not, and make return of this writ in ninety days from the date hereof, with an endorsement thereon as to the manner in which you executed the same.

[SEAL.] "Witness Levi Jenks, clerk of our said court, and the seal thereof, at Juliet, the 30th day of March, A. D. 1840.

"LEVI JENKS, *Clerk.*"

On the back of which execution appears the following endorsement, to wit:

"Served the above execution on the following goods and chattels—to wit: one sulkey and harness; one span of horses; one two-horse wagon; one harness; one broken wagon; one old wagon; one piano and stool; two stoves; one cooking stove and furniture; one yoke of oxen; 2 carpets; lot of glass ware; one stand; one sofa; lot of books; lot of farming utensils; two buffalo skins; one sleigh—on this ninth day of April, A. D. 1840; and I did, on the ninth day of July, proceed to sell the same according to law, which sale am't to..... $166 00
15 17

150 83

"No other goods or chattels, lands or tenements, found wherein to levy, and I return this execution satisfied only in part.

"July 20th, 1840.

"Sheriff's fees, $9 42.
"Clerk's fees, 5 75.

"Received my fees in full; paid over to clerk his fees; and the balance paid over to plaintiff, as per receipt on execution.

"J. N. CUNNINGHAM,
"*Sheriff of W. County,*
"By G. A. SANFORD,
"*Deputy.*"

146 Received, Rockford, July 16th, 1840, of G. A. Sanford, one hundred and fifty $\frac{8}{100}$ dollars on the within execution.

JONATHAN COGSWELL.
By his attorney, F. S. KINNEY.

And afterwards, to wit, on the second day of October, in the year of our Lord one thousand eight hundred and forty-four, the said plaintiff, Jonathan Cogswell, by his said attorney, Hugh T. Dickey, filed in the office of our clerk of our said circuit court a certain notice and affidavit to administrator of execution to sell lands; which said notice is in words and figures following, to wit:

"To Benjamin T. Lee, Esq.,
"*Administrator of the estate of George W. Lee,*
"*late of Winnebago county and State of Illinois, deceased:*

"Sir: You will please take notice that Jonathan Cogswell recovered a judgment against George W. Lee, now deceased, in the circuit court of Will county, in said State of Illinois, on the fourteenth day of March, in the year one thousand eight hundred and forty, (1840,) for the sum of five thousand six hundred and fifty-one $\frac{32}{100}$ dollars ($\$5,651\frac{32}{100}$) damages, besides costs of suit, as by the records of said judgment, now remaining in the office of the clerk of said court at Juliet, in said county of Will, fully appears; which said judgment now remains unpaid and unsatisfied, except as to the sum of $\$150\frac{82}{100}$ paid thereon on or about the 16th day of July, in said year 1840: And that you will further please take notice that
147 the said Jonathan Cogswell, the plaintiff in said judgment, will, after the expiration of three months from the date of this notice, cause execution to be issued upon said judgment against the lands and tenements of the said defendant, George W. Lee, now deceased, without first *reviving* the said judgment against the heirs or legal representatives of the said George W. Lee, deceased; which proceedings, to issue said execution, will be had and taken by the said Jonathan Cogswell, the said plaintiff in said judgment, under and by virtue of an act entitled 'An act in relation to judgments and executions,' passed by the general assembly of the State of Illinois, approved February 25th, 1843.

"Dated this 1st day of January, A. D. 1844.

"Respectfully, y'r ob. serv't,

"HUGH T. DICKEY,
"*Attorney for Jonathan Cogswell, Plff.*"

I hereby admit that a notice, of which the above is a true copy, was duly served on me on the day of the date hereof.

Dated this 1st day of April, A. D. 1844.

BENJAMIN T. LEE,
Adm'r on Estate of George W. Lee, dec'd.

State of Illinois, *Will county, ss:*

Hugh T. Dickey, of the county of Cook, in said State, being duly sworn, said that George W. Lee, of the county of Winnebago, in said State, departed this life some time in the fall of the year A. D. 1842.

HUGH T. DICKEY.

148 Subscribed and sworn this 2 Oct., A. D. 1844, before me.

WM. SMITH, *Clk.*

State of Illinois, *Will county, ss:*

I, Alexander McIntish, clerk of the circuit court in and for said county and State, do hereby certify that the above and foregoing is a full, true, and correct copy of the first and final order of judgment had and entered of record in said court, the declaration, power of attorney, and cost bond filed

in said cause, the execution to Winnebago county, with the sheriff's return thereon endorsed, together with the notice to Benjamin T. Lee, the administrator of the estate of the defendant mentioned in said instrument, in the case wherein Jonathan Cogswell was plaintiff and George W. Lee was defendant. And I further certify that, on the second day of October, A. D. 1844, there were issued out of the clerk's office of the Will county circuit court two alias executions upon the judgment mentioned herein, one directed to the sheriff of Winnebago county, and the other directed to the sheriff of Lasalle county, in the said State, and that said executions remain unreturned, as appears of record.

In testimony whereof, I have hereunto set my hand and affixed the seal [SEAL.] of the said court, at office in Juliet, this 29th day of July, A. D. 1839.

A. McINTISH, *Clerk.*

149 Memoranda of levy and copy of sheriff's deed (alluded to in the memoranda heretofore made in this record.)

JONATHAN COGSWELL }
v. }
GEORGE W. LEE. }

Certificate of A. Barnum, sheriff of Winnebago co., Ill., that, by virtue of execution to him directed from circuit court of Will county, in favor of Jonathan Cogswell against Geo. W. Lee, dated Oct. 2d, 1844, he did, on the 2d of Nov., 1844, levy on the following real estate in Winnebago co., same description as in the deed filed 2d Nov., '44, 15 minutes past 6 p. m., page 4, 5, 6.

Copy of sheriff's deed.

Whereas Jonathan Cogswell did, at the term of the circuit court held in and for the county of Will, in the State of Illinois, in the month of March, in the year one thousand eight hundred and forty, to wit, on the fourteenth day of March, in said year, recovered a judgment against George W. Lee for the sum of five thousand six hundred and fifty-one dollars
150 and thirty-two cents damages and costs of suit, upon which judgment an execution was issued, dated on the second day of October, A. D. 1844, directed to the sheriff of the county of Winnebago, to execute, and by virtue of said execution A. Barnum, the then said sheriff of said last-mentioned county, levied upon the lands hereinafter described, and the same were struck off and sold to Franklin S. Kinney, he being the highest and best bidder therefor; and the time and place of the sale thereof having been advertised according to law: Now, therefore, know all, by this deed, I, Hiram K. Maynard, sheriff of said county of Winnebago, and successor in office of the said A. Barnum, in consideration of the premises, have granted, bargained, and sold, and do hereby convey to the said Franklin S. Kinney, his heirs and assigns, the following-described tracts of land, to wit: the east half of the southeast fractional quarter of section twenty, (20,) in township forty-three (43) north, of range one (1) east of the third principal meridian; the east half of the northeast quarter of section twenty-nine (29,) in township forty-three (43) north, of range one (1,) east of the
151 third principal meridian; the east half of the southeast quarter of section twenty-nine (29,) in township forty-three (43) north, of range one (1) east of the third principal meridian; the northeast quarter of section thirty-two (32,) in township forty-three (43) north, of range

one (1) east of the third principal meridian; the west half of the northwest quarter of section thirty-three (33,) in township forty-three (43) north, of range one (1) east of the third principal meridian. Also a parcel of land at Kishwaukee, described as follows, to wit: beginning on the east line of section twenty-nine (29,) in township forty-three (43) north, of range one (1) east of the third principal meridian, six rods south of section twenty, (20;) running thence north to Rock river; thence to the middle of Kishwakee creek; thence up the middle of said creek, south of the island thereon, to a point opposite the centre of Bridge street, as laid down on the map or plat of the town or village of Kishwaukee, recorded by George W. Lee; thence along the centre of that street to the centre of "Lee's avenue;" thence southerly along the centre of said avenue to section twenty-eight,
(28;) thence south six rods; and thence west to the place of begin-
152 ning. Also all the right, title, and interest which the said Lee had at the time of his death to an island in Rock river, called Beaver's island, lying opposite said premises, and to the lands lying under water in that river, lying adjacent to said premises; excepting and reserving in block eight (8,) lot seven (7,) in block twenty-five (25,) lot eleven (11,) and such other town lots as the said Lee may have sold or contracted to sell: to have and to hold the said described premises, with all the appurtenances thereto belonging, to the said Franklin S. Kinney, his heirs and assigns, forever.

Witness my hand and seal this 28th day of May, in the year of our Lord one thousand eight hundred and forty-seven, (1847.)

[SEAL.] (Signed) H. R. MAYNARD, *Sheriff.*

Acknowledged before Chas. H. Spafford, clerk of circuit court, &c., 28th May, '47.

Filed for record same day, 3 o'cl'k p. m. Recorded book I of deeds, page 84.

153 This was all the evidence in the case; and it is agreed that this stipulation shall stand as and for the several deeds of conveyance for the premises in question, referred to in complainant's bill in this cause, except the deed from George W. Lee and wife to Lois Cogswell, above referred to as No. 2 of this stipulation, which shall be copied into the record in full, making a fac-simile, as near as may be, of deed No. 2 in compl's abstract above.

SAM'L W. FULLER,
Solicitor for Comp'ts.
J. T. FARNSWORTH,
Counsel for Defendants.

Endorsed: Filed Nov. 27, 1862.

WM. H. BRADLEY, *Clk.*

154 *Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the seventh circuit and northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court in chancery before you between

William E. Dodge, Daniel James, James Stokes, D. Willis James, and William E. Dodge, jr., complainants, and Lewis H. Lee, Harriet T. Lee, and George S. Lee, defendants, a manifest error hath happened, to the great damage of the said Lewis H. Lee, Harriet T. Lee, and George S. Lee, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the
155 same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the law and custom of the United States, should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the said Supreme Court, this 22d day of January, in the year of our Lord eighteen
[L. S.] hundred and sixty-three, and of the independence of the United States the 87th.

WM. H. BRADLEY, *Clerk.*

Endorsed: Filed Jan. 30, 1863.

WM. H. BRADLEY, *Clerk.*

Citation.

United States of America to William E. Dodge, Daniel James, James
156 Stokes, D. Willis James, and William E. Dodge, jr., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the seventh circuit and northern district of Illinois, wherein Lewis H. Lee, Harriet T. Lee, and George S. Lee are plaintiffs and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Thomas Drummond, judge of the said northern district of Illinois, this 22d day of January, A. D. 1863.

THOMAS DRUMMOND.

Received copy of within citation this 30th day of Jan'y, A. D. 1863, and appearance entered.

SCAMMON, McCAGG & FULLER,
Solicitors for Appellees.

Endorsed: Filed Jan. 30, 1863.

WM. H. BRADLEY, *Clk.*

157 *Appeal bond.*

Know all men by these presents, that we, Harriet T. Lee, as principal, and John F. Farnsworth and William T. Burgess, as sureties, are held and firmly bound unto William E. Dodge, Daniel James, James Stokes, D. Willis James, and William E. Dodge, jr., in the penal sum of one thousand dollars, for the payment of which well and truly to be made to them, their execu-

tors, administrators, or assigns, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Signed, sealed, and dated this 22d day of January, A. D. 1863.

Whereas on the 26th day of November last, at a term of the circuit court of the United States for the eighth circuit and northern district of Illinois, on the chancery side thereof, in a certain cause then pending in said court, a decree was rendered in favor of said obligees and against Lewis H. Lee, Harriet T. Lee, and George S. Lee, three of the defendants therein, from which the said Harriet T. Lee hath prayed and sued out a writ of error to the Supreme Court of the United States:

158 Now, therefore, the condition of this obligation is such, that if the said Harriet T. Lee shall prosecute said writ of error to effect and without delay, and shall answer all damages and costs if she shall fail to make her plea good, then the above bond to be void; otherwise to remain in full force.

HARRIET T. LEE. [SEAL.]
JOHN F. FARNSWORTH. [SEAL.]
W. T. BURGESS. [SEAL.]

Endorsed: Approved.

THOMAS DRUMMOND.

On filing the within bond it is stipulated on part of pl'ff that if record filed in Supreme Court in twenty days from to-day, the execution of decree to be stayed until the disposition of case in Supreme Court.

Jan'y 30, 1863.

SCAMMON, McCAGG & FULLER,
Solicitors for Appellees.

Endorsed: Filed Jan. 30, 1863.

WM. H. BRADLEY, *Cl'k.*

159 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a full, complete, and transcript of the record in the cause wherein William E. Dodge *et al.* are complainants, and Lewis H. Lee *et al.* are defendants in chancery, as the same appears from the record of said court now remaining on file in said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at office, in Chicago, this 30th day of January, A. D. [SEAL.] 1863, and of our independence the 87th year.

WM. H. BRADLEY, *Clerk.*

160 *Appeal bond.*

Know all men by these presents, that we, Harriet T. Lee, as principal, and John F. Farnsworth and William T. Burgess, as sureties, are held and firmly bound unto William E. Dodge, Daniel James, James Stokes, D. Willis James. and William E. Dodge, junior, in the sum of one thousand dollars, to be paid to the said William E. Dodge, Daniel James, James Stokes, D. Willis James and William E. Dodge, jr., their executors or administrators, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 28th day of February, A. D. 1863. The condition of this obligation is such, that whereas the said Harriet T. Lee hath prayed an appeal to the Supreme Court of the United States to reverse the decree rendered in a certain suit lately pend-

ing in equity in the circuit court of the United States for the eighth circuit and northern district of Illinois, wherein said William E. Dodge, Daniel James, James Stokes, D. Willis James, and William E. Dodge, jr., were complainants, and Harriet T. Lee, Lewis H. Lee, and George S. Lee,
161 were defendants, in favor of said complainants against said defendants: Now, therefore, if the said Harriet T. Lee, Lewis H. Lee, and George S. Lee shall prosecute the said appeal to effect, and answer all costs in case they fail to make good their plea, then this obligation to be void, otherwise the same shall be and remain in full force and virtue.

HARRIET T. LEE. [SEAL.]
J. F. FARNSWORTH. [SEAL.]
W. T. BURGESS. [SEAL.]

Endorsed: Approved.

THOMAS DRUMMOND.

Filed March 3, 1863.

WM. H. BRADLEY, *Clk.*

Citation.

UNITED STATES OF AMERICA, *ss:*

To William E. Dodge, Daniel James, James Stokes, D. Willis James, and William E. Dodge, jr., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first
162 Monday of December next, pursuant to an appeal prayed and allowed in the circuit court of the United States for the eighth circuit and northern district of Illinois, wherein Harriet T. Lee, Lewis H. Lee, and George S. Lee are appellants, and you are appellees, to show cause, if any there be, why the judgment and decree of said circuit court in a case lately pending therein, wherein you are complainants, and said appellants defendants, on the chancery side of said circuit court, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Thomas Drummond, judge of the said northern district of Illinois, this third day of March, A. D. 1863.

THOMAS DRUMMOND.

I admit due service on me of a copy of this citation, March 3d, 1863.
SAM'L W. FULLER, *Solicitor for Appellees.*

Endorsed: Filed March 3d, 1863.

WM. H. BRADLEY, *Clk.*

163 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify that the foregoing are true copies of the appeal bond and citation filed in the cause wherein William E. Dodge *et al.* were complainants, and Harriet T. Lee *et al.* were defendants, as the same appear from the originals thereof now on file in said cause and remaining in my custody, a record having been furnished on an appeal prayed in said cause on the 26th Nov'b'r, A. D. 1862.

In testimony whereof, I have hereunto set my hand and affixed the seal
[SEAL.] of said court, at Chicago, this 4th day of March, A. D. 1863, and of our independence the 87th year.

WM. H. BRADLEY, *Clk.*

Filed March 10, 1863.

United States Supreme Court.

Harriet T. Lee et al.
vs.
William E. Dodge et al.
} *No. 125.*

ARGUMENT FOR THE APPELLANT.

The appellees filed the bill in the Court below, to enjoin the appellants from setting up their legal title to lot 4, block 53, original town of Chicago, and for a conveyance to the appellees of the north 40 feet of said lot. The court below granted the relief sought. This appeal is brought to reverse that decree. We say, *that the appellees have made out by the proof, no case entitling them to any relief, and the decree must be reversed, and the bill dismissed.* The appellants in this case are the infant heirs, and as such the court will protect them, and will require the strongest and clearest proof before they will deprive them of any of their rights. It is conceded by the appellees that they are only entitled to a decree upon the ground that George W. Lee, the ancestor of appellants, before his death, and more than 20 years ago, had proposed to convey this lot with others to one Lois Cogswell, and that prior to the death of said Lee that proposition had been accepted by said Lois Cogswell, or her agent, Franklin S. Kinney. The affirmative of this proposition rests upon the appellees, and they must fail unless both the proposition and the acceptance are clearly made out. Before discussing the question, it will be necessary to get at a few facts not

controverted, bearing upon the question. The title of the appellants to the lot in question is derived under a patent to George W. Lee from the Canal Commissioners, dated August 27, 1841. George W. Lee died November 16, 1842. Upon record, recorded June 23, 1843, is a deed purporting to be made by George W. Lee and wife to Lois Cogswell of the lot in question, and dated July 12, 1842. It will be seen that this deed, although on its face dated before the death of George W. Lee, was not recorded till some seven months after his death. Under this deed, the appellees undertake to derive title to the north 40 feet. If this deed was valid, there would be no necessity for the bill in this case. But the deed is void, owing to the fact that it was never delivered or fully executed by Lee; but was found by the agent of Lois Cogswell, Franklin S. Kinney, after Lee's death, among his papers, without the name of a grantee, and, with the concurrence of the administrator of George W. Lee, the name of Lois Cogswell was inserted as grantee, and the deed placed on record. It is conceded that this fraud, thus sought to be practiced upon the infant heirs of George W. Lee, fails to divest them of the title, and the deed is void as to Lois Cogswell and all claiming under the deed. Much is said in the bill as to the *bona fides* of the appellees. Their *bona fides* can cut no figure in the bill for specific performance. If the deed is void, and this the court of law has so held, and so the authorities hold, the appellees can claim no additional equities from deriving title under it. They therefore are no better situated than Lois Cogswell; Kinney, Lois Cogswell's agent, having practiced the fraud of filling in the name of Lois Cogswell as grantee, and failed, now changes his tactics, and comes into Court as the witness of appellees, and says, that Lee, in his life-time, proposed to convey this with other lots to Lois Cogswell, and that proposition was accepted by him before Lee's death. If this statement of his is untrue it is an end of the case. The discussion naturally divides itself into two propositions: 1st. Did Lee propose to convey the lot in question, and for what? and secondly, was said proposition accepted by a valid acceptance? By reference to the record (p. 25), George W. Lee being about to visit the Western country in 1836, he agreed with Jonathan Cogswell,

Lois Cogswell and Franklin S. Kinney to make investments upon their joint account, the Cogswells and Kinney to furnish money together to the amount of $10,000, Lee to give personal attention to the matter, and take the titles in his name, but afterwards to convey half to the Cogswells and Kinney, the profits and loss to be sustained, half by Lee and the other half by the Cogswells and Kinney. Under this contract sundry property was purchased. *The lot in question was Lee's individual purchase, with which Cogswells and Kinney had nothing to do.* Lois Cogswell was a maiden lady, a sister of Jonathan Cogswell, and Kinney was an attorney in New York, and married a niece of the Cogswells. He attended to their business. A part of the property purchased under this contract was *canal land.* Such lands were always purchased upon time. When the revulsions of 1836 came on, these lots were not entirely paid for. What other besides canal lands were purchased under this arrangement does not appear in the record. After the failures of '36, the Legislature of Illinois passed a law granting relief to purchasers at canal sales. A reduction was made upon the price, and purchaserscould release a part of their purchases and take scrip, and which could be used to pay for other lots sold. Lee released all of the company purchase, except lot 1, block 45, and the east half of lot 2, and the east half of the west half of lot 2, block 45. After he had paid for said lots, he applied the balance of the scrip to pay for lot 4, block 53, originally his own purchase. By his letter of March 20, 1842 (p. 27), he says that his reason for doing so, "was that it was the best pur-"chase on account of its location; that he will own of it the amount "previously paid by him on it, and his joint interest in the balance "as partner." What that interest was, he states in his letter of March 27, 1842, was $2,172 (p. 27). The reduced price or cost of lot 4, block 53, was $3,360, so that, according to Lee's letter, his interest stood as $2,172 to $3,360; or, in other words, he had used of the company's canal scrip to pay for his lot, $1,188. Under the contract between Lee and Cogswells and Kinney, which bears date May 4, 1836, Lee had given his note of $5,000, bearing even date with the contract, to Jonathan Cogswell, and being his half of what

constituted the $10,000 advanced for the joint purchases. On the 8th of February, 1840, Lee gave to Cogswell a warrant of attorney to confess a judgment upon this note. And in the Circuit Court of Will county, Illinois, on March 9, 1840, a judgment was entered thereon, against Lee (p. 47), and personal property sold. While things were in this condition, the letters of March 20th and 26th, 1842, marked Exhibits B and C, were written, which constitute what the appellees claim is the proposition to convey the lot in question. Exhibit C is a letter addressed to Lois and Rev. J. Cogswell. In it Lee does not make any proposition, but says "he is "illy able to hold any part of the property," &c., * * "and he "would like to have some arrangement made if possible," &c., and "that he will address them in a few days." This letter is dated March 20, 1842. It cannot be nor, is it contended, that this letter contains a proposition. So that if one was ever made we will find it in the letter of March 26, 1842. Now, nothing but an afterthought would make that letter a distinct proposition, which needed but an acceptance to make it a valid contract. Kinney, defeated in his fraud upon the heirs; driven to the wall upon filling up a deed with the name of a grantee, now claims for that what neither Lee nor he then understood it to contain. It is true Lee wishes to settle. He says "that he is unable to own the property, and wishes "them to take all and give up his note, he paying property enough "to make them secure." He does not make a distinct proposition. He simply suggests what ought to be done: "For instance, all the "property to be all theirs, which is at one-third less than the cost "now. It will include $2,172.00 of his own property, and give "besides the west fractional half of sec. 19, which ought to go with "the east half, now owned by the company, $400. He will also (if "they actually ask; it ought not to be required) give all his school "section lots in Chicago, which cost $2,600 or $2,700, and certain-"ly worth $1,500 cash now." Does a statement so indefinite look like a valid proposition, to which yes or no could be said? Rather does it not look like a letter from one friend to another, desiring to consult with him as to how to get out of a business scrape, not intended to be made or received as a business proposition, but as

paving the way to an ultimate arrangement when they should meet? Not a *then* proposition, but a free exchange of views between friends, and by which that friend might get at the views of others interested, so that when they should meet, as they intended to meet, he could be prepared to make some arrangement. In the outset of the letter he says: "How to arrange it without "our being together, I know not," showing that he did not understand it as a proposition. He then adds what we have quoted above, and says further: "I feel so much depressed and so unfit to "take care of these matters that I will, if the whole matter can be "settled, give up the matter and have it off my mind, if the whole is asked." What else can we say of this, than that it is the confidential talk of "*friend with friend*," and not intended as a distinct proposition. And further on he adds: "If no arrange-"ment can be made for their taking the property, you and I could "fix it when you come out, which you write will be in May." Now, the theory of the appellees, is that this letter is the proposed proposition which he said he would make in the letter of March 20. That proposition spoken of in the letter of March 20 was to be made to the Cogswells, not to Kinney; and this letter is written to Kinney. The letter of the 20th of March was evidently sent to Kinney under cover of the one of the 26th of March. The commencement of the letter of March 26, is, "Friend Kinney: I en-"close a letter upon the subject of the canal lots, and you will see "how they stand." If that is not the letter enclosed in the one of 26th, where is the enclosure? But all doubt upon the subject is removed by the following passage: "I enclose this letter of March "20, to Miss Cogswell and her brother, with statement;" so that all doubt is removed, and the letter of the 20th, in the record, is the one enclosed to Kinney. We therefore cannot conclude that the letter to Kinney is the proposed arrangement of which he was to address *them*, (not Kinney) in a few days.

We do not think this constitutes a proposition; but if so, there was no valid acceptance of the same. Let us examine the testimony on this point.

The first difficulty which would force itself upon the mind, is, what was to be accepted? The conveyance of the whole property, including the school lots, or the conveyance of the property without the school lots? The immaculate Kinney, after trying to get the property by a fraud, including the Winnebago county land, never mentioned by Lee in his letter, says they accepted the proposition without the school lots. We concede that Kinney does swear that he accepted the proposition; but he does not produce the letter of acceptance—says it is lost. We say he is not to be believed, because, 1st, he stands upon the record a party to a fraud. Finding a deed executed by Lee without a grantee, he procures the name of Lois Cogswell to be filled in. A lawyer, he must have known such an act was criminal, and that the deed was void to convey the property if it ever came to the knowledge of the infant heirs. He must have trusted that time would efface all memory of the act, and they would hold the land; that the children of Lee, the youngest of whom was born after the father's death, would never know the fact. But it is said that B. T. Lee consented to the filling in of the deed. This does not in any manner exculpate Kinney. Lee was no lawyer, Kinney was, and while every one is bound to know the consequences of his own acts, the lawyer is doubly chargeable with guilt, for under his advice and direction did Lee act. Such a man as Kinney, doing what he admits he did, is not to be believed in any matters touching that transaction. He will seek an excuse at the expense of truth. *Secondly*, The filling in the grantee's name in the deed, is evidence conclusive that Kinney at the time, when the facts and circumstances were all fresh in his mind, did not believe that they had any valid contract for the conveyance of the lots in question. He must have known, as a lawyer, that, if the matter had all been settled and the proposition accepted, a bill for specific performance would have given Lois Cogswell a valid title. Why not do then what they now seek to do, at the end of 20 years? The answer is, then Kinney did not believe what he would now have us believe. Smoked out of his fraud, this bill for a specific performance becomes an after-thought—an excuse. Thirdly—Where is the letter of acceptance? If he had intended to practice another

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fraud, the way would be to have the letter lost. This is the case here. Why should he have other letters to Lee, and not that letter, on which their whole case hinges? If he wrote such a letter, why did he not keep a copy of it? Why cannot he tell when he wrote it? He says that Lee notified him of the acceptance of that letter. Why are other letters of Lee kept and that lost? He cannot give the date of that letter; the nearest he comes to it was after his interview with the Cogswells. The letters of his in the record show clearly no arrangement was made. It will be seen by his letter of July 1, 1842, that no arrangement had then been concluded, and he had then had an interview with the Cogswells. Lee died *Nov.* 16, 1842. If there was an acceptance, it of course must have been before his death. By Kinney's letter dated in New York, Oct. 28, 1842, and which could not have reached Lee till after he was taken sick, and but just before his death, it will be seen no arrangement was then made. Nor was any proposed to be made until spring. After deprecating certain annoyances to which Lee had been subjected, he adds: "*Do not despair,* "*my dear friend; you will see pleasant days yet. I shall visit you* "*early in the season, and we can then arrange all our matters, I* "*doubt not, to your satisfaction. In the meantime, you had better,* "*I think, convey the Chicago property to Dr. and Miss Cogswell, to* "*make them feel satisfied, and to guard against accident.*" Had it been then arranged? No; because in the spring he would visit him, and he had no doubt "*it could be arranged to Lee's satisfaction.*" Kinney did not then understand it to be arranged, otherwise; what arrangement was to be made? But to escape this, the appellees chose to say it relates to other matters. The next sentence disposes of that: "In the meantime," (what time? till it it is arranged?) "*you had better convey the Chicago property to Dr. and* "*Miss Cogswell.*" This shows what he had no doubt "could be "satisfactorily arranged," to-wit: the Chicago property. And that the Chicago property had not then been arranged is clearly shown by the balance of the sentence. If it had been arranged, the property belonged of right to the Cogswells. Why convey it to them "to guard against accident—to make them feel satisfied?"

If it was arranged, it was their property—it should be conveyed as such, and not to guard against accident or make them feel satisfied. Before Kinney again undertakes to swear away the rights of infants, and to take from them property which in 1842 was of little value, but which has now largely appreciated in value—what then was worth hundreds is now to be counted by thousands—he had better look into his old letters. Out of them he is branded with a falsehood. This is the last letter produced. Could there have been an arrangement subsequent? No effort to make one was anticipated "till Kinney saw him early in the season." He did not see him. Would Kinney so soon change his mind and at once make an arrangement? We would hardly suppose so. But B. T. Lee's deposition places this beyond doubt. He says (p. 44): "G. W. "Lee died of bilious fever, after ten days severe illness. I was "with him day and night during his illness." A letter in those days required a week to ten days to go from New York to where Lee resided. The letter of the 28th of October would not naturally have reached Lee till after his fatal illness; so that any letter subsequent to that date could not have reached Kishwaukee till after B. T. Lee was devoting his entire time to attendance upon his sick brother, or until after his death, and he consequently would have seen the letter if any had been written. He, B. T. Lee, says, that two or three letters came from Kinney during G. W. Lee's illness, but none purporting to be an answer to the letter of March 26. So that we have the two facts that Kinney did not, in his letter of October 28, 1843, anticipate the concluding of any arrangement till he saw him in the spring, and no arrangement had then been made, and, secondly, that B. T. Lee, if any subsequent letter had been written, must have opened and seen it.

Besides, the letter of young Cogswell, dated East Windsor, October 18, 1842, shows that he did not understand it to be arranged. These would dispose of the testimony of Kinney—but there are other circumstances showing that it was not arranged at the time of his death. He (Lee) so informed his brother during his last illness. B. T. Lee, who caused the deed to be filled up with the name of Lois Cogswell, swears distinctly that the deed was not

made to close an arrangement made with Lee in his lifetime. So that we have the testimony of B. T. Lee squarely contradicting Kinney. Lee has no interest to sway him from the path of truth, while Kinney's position is such as to have his interest lie in the way he swears. Lee is sustained by the agreement made between him and Kinney. Kinney is contradicted by that agreement. A paper, drawn at or near the time, will be more likely to speak the truth, than an interested man's memory after the lapse of twenty years, so that we have Kinney contradicted by his own letters, and his own contracts made with B. T. Lee; and the clear testimony of B. T. Lee. This brings us to the consideration of the contract made with B. T. Lee. He, (B. T.), swears positively that the deed was not delivered to Kinney in fulfillment of any previous agreement or understanding with George W. Lee. Now, if it had been delivered in pursuance of any previous arrangement, or if there had been any previous arrangement with George W. Lee, would not the contract, which was delivered up by the parties, have referred to it? One would say so? By reference to that agreement, (p. 33) the settlement is there made—not the carrying out of a pre-existing contract; but one then made with the administrator. This supports Lee, and squarely contradicts Kinney. By the letter of March 26, Lee only proposes to convey what he owns in sec. 19. They agree in the contract of August 18, 1843, that it should be sold under the judgment against Lee, and embrace lands in Winnebago County not included in Lee's letter of March 26. The first claim of the contract is in these words: "The settlement is made for the purpose "of liquidating and settling the claims of Jonathan and Lewis "Cogswell, and Franklin S. Kinney, against the estate of the late "George W. Lee, arising under the contract between them, dated "4th March, 1836." Of course, if it had been settled previous to his death, as Kinney now claims, they had no claim to the Winnebago County lands, some 400 acres, worth, as is proved, $5 per acre. Did the paper, deliberately drawn up by him then, tell the truth? Or does that lie, and he now, after the lapse of twenty years, swear truly? Under the judgment, by that arrangement, the Winnebago County lands are sold, and they got them, to which

they had no claim. To escape so palpable a contradiction, and which shows a gross fraud, Kinney swears, on page 21 of the record, "That it was arranged between B. T. Lee and myself, that "an execution should issue to Winnebago County, and be levied on "certain lands there, in compromise and satisfaction of my indi-"vidual claim against George W. Lee." Ben. T. Lee directly contradicts him, and says that he only had a claim of a few hundred dollars, and that it was settled by a piano (p. 43). Now, which are we to believe, Kinney or Lee? Fortunately for the cause of truth and the rights of infants, who are sought to be swindled out of their rights, the answer to this question does not depend upon which is to be believed; but on the thirty-second page, Exhibit I, is a document signed by this truthful Kinney, in which all claims of his against the estate of George W. Lee is settled with B. T. Lee, and the estate released therefrom, and the balance, found to be $300, and which is paid by a piano. We would recommend this document to the perusal of Mr. Kinney, adding, "false in one thing false in all." Where, now, does the truthful Mr. Kinney get his rights to the Winnebago County lands? Here is a contradiction which shows that he has sworn falsely. If Mr. Kinney's testimony is discredited, the appellee's case falls to the ground. Without it, there is no pretense that they have shown an acceptance of any arrangement, if any was offered by Lee. With these many contradictions that testimony cannot be believed. The court, upon such testimony, will not take from infants these lands. Squarely and fairly does B. T. Lee contradict Kinney. We say he is to be believed—Kinney, disbelieved. Lee is sustained by cotemporaneous contracts—Kinney, contradicted.

The appelee's claim that, the fact that deeds were found executed by Lee is a circumstance to sustain their view. We do not think so. If they had been made in view of an arrangement there would have been a grantees' name. In the one conveying the land belonging to the company, Lois Cogswell's name was inserted. In the one embracing the land in controversy, which did not belong to the company, there was no grantee. Even if there was an arrangement before Lee's death, which we deny, it must be one bind-

ing upon both parties. They did not deem it binding on them, for they took the Winnebago County lands, by doing so, they waived any previously existing arrangement. They do not anywhere offer to restore these lands to the heirs.

We therefore say, that the decree should be reversed, and the bill dismissed, and the heirs allowed to keep what justly belongs to them, and of which they are sought to be stripped by the fraud of one who professed to be their father's friend.

H. F. WAITE,
Appellant's Atty.

WAITE & TOWNE,
HON. J. S. FARNSWORTH,
} *Counsel.*

IN SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM 1864—No. 125.

BENJAMIN T. LEE, Et. Als., Appellants,

vs.

WILLIAM E. DODGE, Et. Als, Appellees.

This suit was commenced by a bill in equity, filed by the appellees against the appellants, to compel the specific performance of a contract for the conveyance of a lot of land in the city of Chicago, State of Illinois, alleged to have been made by George W. Lee, deceased, (the father of appellants) with the parties under whom the appellees claim title to the premises.

The case turns wholly upon questions of fact. The court below, upon a full hearing of the evidence, entered a decree in favor of the complainants, from which the defendants appealed to this court; and as this brief is prepared in advance of that which will probably be made for the appellants, I present the following statement of the facts as they appear in the record:

On the 4th day of May, 1836, George W. Lee, until then, a resident of the city of New York, entered into an agreement with Jonathan Cogswell, Lois Cogswell and F. S. Kinney, all then residents of the city of New York, or that vicinity, and his personal friends, by the terms of which, Lee was to visit the western country, and make investments in lands for their joint account. This contract was reduced to writing, and will be found on pages 25 and 26 of the record.

Two features of this agreement should be specially noticed: First, that Lee furnished no money to launch the adventure; Secondly, that he was not to make any purchases of real estate, during the period of time covered by the contract, except for the joint benefit of the parties to the agreement.

The deposition of Kinney, one of the parties to this agreement, was taken and read on behalf of the complainants, and his statements, as to his acquaintance with the other parties to it, and what was done by Lee under it, will be found from the bottom of page 15, to the middle of page 17 of the record.

Lee, soon after making this contract, removed to the State of Illinois, and there purchased lands, under the agreement, but advanced only two hundred dollars of his own money (answer to 11th interrogatory, page 17); but he contracted indebtedness for lands bought by him on credit, which he was unable to pay. (Answer 15, page 17). And being very much embarrassed in his affairs, made to Kinney and the Cogswells a proposition to settle the various matters between them, growing out of this business. (Answer 12, page 17.)

This proposition was contained in two letters from Lee: one to Lois and Jonathan Cogswell, dated March 20, 1842, and the other to Kinney, dated March 26, 1842. (Answer 12, page 17). The first letter was enclosed in the last one, and they were sent to Kinney at New York, and duly received by him. (Same answer and page.)

These letters are fully set out on pages 26 and 27 of the record, and marked Exhibits "B" and "C," and we respectfully ask the particular attention of the court to these letters, as they are the foundation of the case made by the complainants. The property now in question is lot

4, block 53, in the original town of Chicago. It is the first lot mentioned in the list of lots made by Lee, which appears on page 26 of the record, and this letter describes the property, its cost, and the value which Lee put on it, with all needful particularity. In this letter he said he would soon make propositions for the settlement of the business, which he thought would be so liberal, that he had no doubt of their acceptance. (See from the middle of page 28 to the end of the letter.

He made this proposition six days afterwards, in the letter dated March 26, 1842, and it is expressed in the first two sentences and found on page 26, in which, after referring to his previous letter on the same subject, he offers the Cogswells and Kinney all the property, in consideration of their giving up his note. This offer is so distinctly made, that, in connection with his previous letter, it makes a complete and definite proposition to convey to the Cogswells or Kinney, as the latter might prefer, the property in question. It is certain as to parties, property, price and the terms of payment, and is to be considered in connection with the testimony of Kinney, found on pages 17, 18 and 19 of the record.

The next inquiry is, was this proposition of Lee's accepted by the parties to whom it was made?

Kinney swore positively that it was. (See his answers to interrogatories 17 to 23 inclusive, on pages 18 and 19 of the record.) He stated that he wrote, and forwarded by mail, a letter to Mr. Lee, informing him that his proposition had been accepted by the Cogswells and himself. (Answer to interrogatory 18.) The negotiations between the parties ripened into a complete and binding contract, by the letter of acceptance, when it was written and forwarded, (*Taylor* v. *Merchants' Fire Insurance Co.*, 9 Howard, 390

and 402), and Lee might have been compelled to perform it, and so may his heirs, if he died before performance, even at this distance of time.

Coulson v. *Walton et. al.*, 9 Peters, 62.

But the making of this contract is the main question in the case, and Kinney's testimony must be considered in connection with the other evidence bearing on this point.

Lee made the agreement between the Cogswells and himself in 1836, and went to Illinois in that year. On page 35 of the record, will be found a letter from Kinney to Lee, dated April 17, 1841, in which the latter is requested to have the conveyances of certain lands, that he was about purchasing, made directly to Miss Cogswell, and on the same page will be found a power of attorney from her to Lee, authorizing him to act in her behalf. On page 36, will be found two letters from Kinney to Lee, written in the latter part of the year 1841, both referring to the lands bought by Lee on joint account, and in the second one, referring to Lee's selection of "a lot on the east side of the "creek (which is the lot in controversy), which was his "sole purchase," and inquiring how that "is to be brought "into the joint account," and again stating that they "want the titles in Miss Cogswell."

On page 37 will be found, in a letter from Kinney to Lee, dated March 1, 1842 (about three weeks before his letters to Kinney and the Cogswell, marked "B" and "C," pages 26 and 27) asking Lee's early "attention to the subject of the "property" in which the parties are jointly interested," and repeating "that they (the Cogswells) specially desired "to have the titles put in the name of Miss C.," and saying that, "if he desires to make some arrangement to close "the whole contract, he might send a proposition to that "effect, and it should have a favorable consideration."

In three weeks after this, Lee wrote and forwarded the letters of March 20 and 26, 1842, before referred to, and found on pages 26 and 27, which Kinney swears were duly received, laid before the Cogswells, and after consideration by them and him, the "proposition" which they contained was accepted, and Lee was, by mail, notified of it. This closed the contract between the parties, if the testimony of Kinney is believed. His testimony is supported by the letters and documents which were offered in evidence.

In Lee's letter of March 20, 1842, he states that he had consolidated the purchases made by him for the company and on his separate account, on three lots in the city of Chicago. (See page 27 near the bottom.)

On page 29, is found a copy of a deed from Lee and wife, to Lois Cogswell of two of those lots, for the exact sum ($5,419) as the consideration of the conveyance, which he stated in his letter, was the cost of them.

On page 30, is a copy of another deed from Lee and wife to Lois Cogswell, of the lot in controversy (lot 4, block 53), for the same consideration, as the cost of it, stated in his letter. The deeds are dated July 5, 1842, and appear to have been acknowledged on the 12th day of that month. The history and legal effect of these deeds will be considered hereafter; but they show a purpose on the part of Lee, to convey the lots to Miss Cogswell and a part execution of it.

The letters of Cogswell and Kinney to Lee, dated June 10, 1842, July 1, 1842, and Oct. 28, 1842 (pages 37, 38 and 39), all show an expectation on the part of the writers, that Lee would convey the lots to them, or one of them, in pursuance of some proposition previously made, and fully understood by all parties interested.

But the letter of J. Cogswell to Lee, dated Oct. 18, 1848, found on pages 39 and 40 of the record, removes all doubt on

this part of the case. It, in connection with the previous letters, already referred to, shows that Lee's proposition to convey the lots to the Cogswells or Kinney, as they might elect, had been received by them, accepted, and that they had notified Lee of its acceptance, and were urging him, in the most earnest, though friendly manner, to carry it into effect. From this letter it appears, that the writer supposed that the property had been conveyed to his sister, Lois Cogswell, in accordance with Lee's proposition. The weight of this letter, as evidence, cannot be increased or weakened by argument upon it. It speaks for itself, and I will not swell my brief, by either quoting it, or making further comment upon it. This, and all the preceding letters, were received by Lee in his lifetime, and found among his papers after his death. (Page 40.)

Lee died in Illinois on the 16th day of November, 1842 (page 41, answer 4 of B. T. Lee), after ten days of severe illness (page 44, B. T. Lee's answer to first and fourth cross interrogatories).

Kinney intended to go to Illinois during the summer or fall of 1842, and informed Lee of that intention in the spring of that year. See Kinney's answer to twenty-fourth interrogatory, page 19, and this fully explains Lee's delay in completing and forwarding the deeds which he was to make in compliance with his proposition.

The complainants derived title to the lot in question under the following conveyances, which were recorded as follows:

1. Patent from the State of Illinois to Geo. W. Lee, dated Aug. 27, 1841, recorded April 23, 1842.

2. Deed from Lee and wife to Lois Cogswell, dated July 5, 1842, recorded June 23, 1843 (record, pages 12 at bottom, 13 at top).

3. Lois Cogswell to Jonathan Cogswell, dated January 16, 1849, and recorded February 13, 1849.

4. Jonathan Cogswell and wife to Michael Nugent and Owen Owens, dated Feb. 8, 1855, recorded Feb. 10, 1855.

5. Judgment in favor of complainants against Nugent, Oct. 30, 1855, and a Sheriff's deed dated June 20, 1857, founded upon an execution sale under that judgment.

6. Deed of trust made by Nugent and Owens to Shumway, as trustee for Bacon Wheeler, dated April 1, 1856, which, with the securities, was assigned to the complainants (page 14).

This vested in complainants a good title to the premises (subject to the deed of trust to Shumway), founded upon apparently properly executed and recorded deeds, and under which complainants, and the parties under whom they claim title, have always had possession of the lot in controversy, and paid the taxes and assessments thereon, and made valuable improvements, in the belief that they had a good title to it, pages 3 (statement in the bill), 8 and 9 (admissions in the answer).

In the month of August, 1858, the defendants below brought actions of ejectment against the tenants of complainants, to recover possession of the lot in question.

Those plaintiffs in ejectment were the children and heirs at law of George W. Lee, deceased, and claimed title to the premises by inheritance from him, and denied that he ever made the deed to Lois Cogswell, dated July 5, 1842, and alleged that it was a forgery, and even if genuine, that it was never delivered, pages 3, 4, (statements in the bill) 8, 9, 10 (admissions in the answer).

In these actions the plaintiffs recovered judgments, and the complainants, as the landlords of the tenants, and the parties in interest, then filed their bill in this suit, to enjoin

the further prosecution of the ejectment suits, and for specific performance of the agreement made with Lee.

Two deeds from Lee to Cogswell, dated respectively July 5, 1842, were found among his papers after his decease, by B. T. Lee, administrator of his estate, page 41, answer 9, and B. T. Lee inserted in one of them the name of Lois Cogswell, as grantee. (Answer 10, page 41.)

This deed appears to have been complete in all respects, except that the name of the grantee was omitted. The other deed to Lois Cogswell, found among Lee's papers, by his administrator, was complete.

B. T. Lee informed Kinney that he had found such deeds among the papers of his deceased brother, and by arrangement, met Kinney in the city of Chicago, in the spring of 1843, when and where the deed marked exhibit "E," Kinney's dep., p. 30, was delivered by B. T. Lee to Kinney (the deed marked exhibit "D," Kinney's dep., p. 29, had before been sent to him); and by the latter left for record at the proper office, page 19, twenty-fourth answer of Kinney, and also page 21, to end of his deposition. Deposition of B. T. Lee, pages 41, 42, and 45, last two answers.

The short, plain account of these deeds appears from the evidence to be this: that, soon after Lee was notified by Kinney that his proposition to settle the accounts between him and Kinney and the Cogswells had been accepted, that he prepared, and with his wife executed, the necessary deeds to complete the settlement; that he did not forward the deeds to the parties entitled to them, because he expected Kinney to visit him, and then the matter could be closed; but that Kinney did not go to Illinois, and Lee languished in poor health and low spirits until November, when he died, after a short and severe sickness, leaving the matter unfinished. But it plainly appears, from the letters

of Kinney and Cogswell to him during the last months of his life, that they supposed he had completed the arrangements, but had neglected to advise them of it.

The complainants did not insist below, nor do they here, that the paper purporting to be a deed of the lot in controversy from George W. Lee to Lois Cogswell, dated July 5, 1842, is a valid conveyance of the premises mentioned in it. It is in that respect without legal effect.

But the complainants insist, that, taken in connection with all the other testimony in the case, this paper is weighty evidence that an agreement had been made between Lee and Kinney and the Cogswells, by which he was bound to convey that lot to one of the latter, upon the terms mentioned in his letters of March 20 and 26, 1842, pages 26, 27, 28.

The bill is framed upon the theory, either that Lee made, executed and delivered that deed, whereby it became a valid and effective conveyance of the lot mentioned in it, or that he made an agreement to convey it, which ought to be specifically performed by his heirs, if he did not perform it, pages 5 and 6.

The bill states that Lee had invested in that lot only $2,172 of his own money, while it cost originally $5,040, which was reduced to $3,360, and the balance was paid out of funds furnished by Kinney and the Cogswells, to which extent they had an interest in the lot from the beginning; and that after Lee's proposition was accepted he held the title in trust for the parties, to whom he had agreed to convey it (page 6).

The answer denies all these statements in the bill. It is not under oath, and the case turns upon the question whether or not an agreement was made by Lee to convey

the lot in question, which may be enforced by complainants against his heirs.

The court below, upon full consideration, and after looking at the case, with the advantage of seeing all the original letters and papers, and of hearing the main witness for the defendants in this case testify on trial of the ejectment suits, entered a decree in favor of the complainants and I think that decree ought to be affirmed.

As I have said before, Lee's proposition to convey the lot in question, and the other parcels of land, was, in all respects, legally certain and sufficient.

If the testimony of Kinney is believed, that proposition was accepted, and Lee notified of its acceptance; and the Cogswells and Kinney, who lived a thousand miles from him, and had no convenient or speedy mode of communicating with him, appear to have supposed that Lee had done, or would soon do, all that was necessary on his part to carry the agreement into effect.

Kinney's testimony is supported by all the other evidence in the case except in some unimportant particulars, which B. T. Lee states differently from what he does.

There was nothing for the Cogswells or Kinney to do except to close with Lee's offer, and notify him of their acceptance of it.

They had no payments to make, for they furnished nearly two-thirds of the original purchase money, and Lee owed them much more than he had paid out of his own funds on account of the purchase of the lot, and was to convey the lot in satisfaction of that indebtedness.

After his offer to convey the lot was accepted, he held the title to it in trust for the parties to whom he was bound to convey it, and it descended to his heirs subject to that

trust, and they may be compelled to perform his contract as made.

Frye on Specific Performance, 100, top, chap. 111, sec. 114 and following.

There seems to be no reason to hold that the contract could not have been enforced against Lee in his lifetime, and if it could then it may be against his heirs, or legal representatives, and at the instance of the assignee or grantee of the vendees.

Frye on Specific Performance, 104, top, chap. 4.

Coulson v. *Walton et al.*, 9 Peters, 62.

I suppose, however, that it will not be insisted for the appellants that the law is otherwise than I have stated; but that, although the court shall believe such a contract was made as the complainants rely upon, and insist has been fully proved, yet that the contract was waived by Kinney and B. T. Lee, the administrators of the estate of George W. Lee, and as the complainants cannot rely upon the paper purporting to be a deed from Lee to Lois Cogswell, dated July 5, 1842, as an operative conveyance of the lot in question, they have neither a deed nor a contract to stand upon for the protection of their interest.

This objection, by the defendants below, is founded upon the terms of two agreements between B. T. Lee, acting as administrator of his brother's estate, and Kinney, acting on his own behalf, and of the Cogswells. The first of these agreements will be found on pages 32 and 33 of the record, and does, in fact, and only purports to relate to Kinney's and Geo. W. Lee's individual dealings, and expressly excepts all the joint claims of Kinney and the Cogswells against the estate of Lee.

The second of those agreements will be found on pages 33 and 34 of the record, and the first article of it provides that all the lands conveyed by Lee to the Cogswells and Kinney, under the contract of March 4, 1836, shall belong to the grantees. It appears to rest upon the assumption that the deeds of those lands and lots which, about that time, were delivered by Lee to Kinney, for the Cogswells, were valid conveyances of the premises described in them, and it clearly appears from it that the parties intended by this to perform, and not to rescind, the agreement made with Lee in his lifetime. None of the lands or lots mentioned in Lee's letters of March 20 and 26, 1842, are mentioned in this instrument, and it tends, in no degree, to impair the agreement made with Lee in his lifetime.

The judgment in favor of Cogswell, against Lee, referred to in this paper, was a voluntary one, confessed by Lee some years before, to secure his indebtedness to the Cogswells and Kinney (Kinney's deposition, ans. 25 and 26, p. 20, record).

A copy of the record of this judgment, and of all the proceedings under it, before and after Lee's death, is found in the record, pages 46 to 52.

From the terms of the agreement, on pages 33 and 34, it appears that the parties attempted to use that judgment as a means of vesting title to certain lands owned by Lee, at the time of his death, in the Cogswells or Kinney. None of these proceedings relate to the lot in question; the title to that was supposed to be well vested in Lois Cogswell, by the delivery to Kinney of the instrument purporting to be a deed of it.

The parties endeavored to complete whatever had been agreed upon with Lee, and attempted, it is true, to do that under the judgment, which they ought not to have done;

but that ought not to avoid what was well done, nor did it discharge the obligation to do what had been agreed to be performed.

In all these acts of B. T. Lee and Kinney there was no attempt, or intention, to avoid or rescind the agreements with Lee in his lifetime respecting the lot in question.

The case ought to stand and be considered as if George W. Lee had delivered the deeds to the parties in his lifetime (as they seem to have supposed he had); and had that been done it would not be pretended that the acts and agreements between B. T. Lee and Kinney at all changed the rights of the parties under those deeds. The court may well hold that the title to the lot in dispute was, or should be, vested in Lois Cogswell, without passing on the legal effect of what Lee and Kinney did, or attempted, in regard to the other property.

And the more so, when it appears that the records showed an apparently perfect title in the parties who claim under Lois and Jonathan Cogswell.

The latter conveyed to Nugent and Owens, who made a deed of trust to Shumway, to secure thirty-five hundred dollars due to Wheeler, which has been assigned to the complainants; and complainant having obtained a judgment against Nugent, levied their execution on his interest in the lot, sold it in satisfaction of their judgment for twenty-seven hundred and twenty-two 82-100 dollars, besides costs of suit, and received a sheriff's deed under such sale in the usual course of law (record, pp. 2, 3 and 14).

This made the complainants *bona fide* purchasers for value of the lot, and, being in possession, they are entitled to maintain this suit to quiet and perfect their title to it.

By their bill, they only ask the heirs of George W. Lee to do what their father agreed to do, and to abide by his engagements.

There is no hardship in this. Their father owed the Cogswells and Kinney all that the lots which he agreed to convey to them were worth, and the decree in this case was but a performance of his agreement.

The legal title to the lot descended to Lee's heirs subject to his agreement to convey it in satisfaction of his indebtedness, and it is inequitable that his heirs should take his property without paying the debts which he had secured upon it, or rather which he agreed to pay with it.

In view of the rights and liabilities of Lee's heirs, and of the equities of the complainants below, and the parties under whom they claim title to the lot, who have, in good faith, bought and paid for it, made valuable improvements on it, and, being in possession, have paid the taxes thereon for a long series of years, I think the court will agree with me, that the complainants are entitled to the relief they pray for and obtained in the court below. The case of *Coulson* v. *Walton and others*, 9 Peters, 62, is a precedent that fully supports our case.

If the complainants do not obtain the relief they pray for, then the appellants take the lot in question without paying what their father agreed to pay with it, which amount, except by its conveyance, never has been paid; the claims of the Cogswells and Kinney against Lee will not be paid; the debts secured on this lot, in the belief that the debtors had a good title, as appeared of record, will be lost, and the conclusiveness of a deed, duly recorded, and for nearly twenty years unquestioned, as to validity of title, will be greatly impaired.

The court can well affirm the decree in this case, and let the appellants seek relief, if they are entitled to it, against the attempted conveyance of their father's lands, by means of the judgment, and proceedings under it, had and directed by Kinney and Ben. T. Lee. What was

agreed to be done by Geo. W. Lee, and partially performed, may be affirmed without any real injury to the appellants, as complainants only seek performance of the agreements of their father, made in good faith and for a valuable consideration.

SAM'L W. FULLER,
for Appellees.

WASHINGTON, D. C., Dec. 17, 1864.